United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B p/s

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
MAY 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume VI—Pages A-3401 to A-4080

ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York,
One St. Andrew's Plaza
New York, N. Y.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON,
345 Park Avenue,
New York, N. Y. 10022.
(212) 644-8000.
of Counsel,

CURTIS, MALLET-PREVOST, COLT & MOSLE,
100 Wall Street,
New York, N. Y. 10005.
(212) 248-8111.

STANLEY S. ARKIN, P.C.,
600 Third Avenue,
New York, N. Y. 10016.
(212) 869-1450.

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

PAGE

Relevant Docket Entries A-1
Indictment. A-10
Judgment. A-37
Trial Transcript. A-44
Government's Opening Statement. A-156
Defendants Henry L. Hoffman and
Howard Friedman's Opening Statement. A-207
Defendants AMREP Corporation and ATC
Realty Corporation's Opening Statement . . . A-237
Defendant Irving Blum's Opening Statement A-244
Defendant Herman Oberman's Opening Statement. . . A-246
Defendant Solomon Friend's Opening Statement. . . A-249
Defendants Daniel Friedman and Chester
Carity's Opening Statement A-270

Witnesses for Government:

Berit Hampe:
- Direct A-295
- Cross. A-365
- Redirect A-401
- Recross. A-404

Helen Henry:
- Direct A-405
- Cross. A-472
- Redirect A-635

Theodore R. Schreier:
- Direct A-652

Howard Mandel:
- Direct A-749
- Cross. A-1065
- Redirect A-1112

PAGE

Peter Zaknich:

Direct A-1128
Cross. A-1282
Redirect A-1335

Otto Steve Bondy:

Direct A-1374
Cross. A-1489
Redirect A-1524
Recross. A-1531

Allen Seder:

Direct A-1541
Cross. A-1579
Redirect A-1615

William J. Finnen:

Direct A-1620
Cross. A-1669

Ann Greenberg:

Direct A-1714
Cross. A-1784
Redirect A-1820

David Jones:

Direct A-1823
Cross. A-1852
Redirect A-1901

Morton Lederman:

Direct A-1907
Cross. A-2010
Redirect A-2073

Nicholas Thomas Masone:

Direct A-2087
Cross. A-2175
Redirect A-2218

Elinor DeWitt:

Direct A-2230
Cross. A-2262
Redirect A-2307

PAGE

Daniel Monaco:
Direct A-2309
Cross. A-2379
Redirect A-2425
Recross. A-2431

Donovan Potter:
Direct A-2436
Cross. A-2515
Redirect A-2518
Recross. A-2522
Redirect A-2522

William Evans Brindle:
Direct A-2525
Cross. A-2534
Redirect A-2546

James Davis:
Direct A-2547
Cross. A-2570
Redirect A-2593

Khadijah Mohammed:
Direct A-2597
Cross. A-2615
Redirect A-2626
Recross. A-2631

Dennis Finnerty:
Direct A-2639
Cross. A-2665
Redirect A-2694

Leon Switt:
Direct A-2695
Cross. A-2724

Anna Bonavisa:
Direct A-2747
Cross. A-2777
Redirect A-2810

PAGE

Leon Fox:
- Direct A-2817
- Cross. A-2867

Selma Switt:
- Direct A-2891
- Cross. A-2910
- Redirect A-2954

Linda Davis:
- Direct A-2960
- Cross. A-2983
- Redirect A-2994

Patricia Candace Miller:
- Direct A-2996
- Cross. A-3038
- Redirect A-3068

Darlene McCorkle:
- Direct A-3070
- Cross. A-3166
- Redirect A-3260
- Recross. A-3268

Lawrence Perlmutter:
- Direct A-3269
- Cross. A-3556
- Redirect A-3664
- Recross. A-3717
- Redirect A-3718

Harriet James:
- Direct A-3720
- Cross. A-3785
- Redirect A-3833
- Recross. A-3841
- Redirect A-3841

Gustave Alfons Mols:
- Direct A-3842
- Cross. A-3891
- Redirect A-3933

	PAGE
Morris Gusowsky:	
Direct	A-3937
Cross	A-3962
Redirect	A-4025
Kenneth C. Neiswander:	
Direct	A-4037
Cross	A-4055
Redirect	A-4089
Recross	A-4092
Charles Woodward:	
Direct	A-4092
Albert I. Pierce:	
Direct	A-4205
Cross	A-4294
Redirect	A-4370
Recross	A-4439
George L. Carruthers:	
Direct	A-4464
Cross	A-4600
Redirect	A-4766
Ralph Alphonse Avellanet:	
Direct	A-4787
Cross	A-4842
Redirect	A-5021
Lemuel Raymond Seay:	
Direct	A-5048
Cross	A-5080
Redirect	A-5097
Recross	A-5121
Richard L. Musgrove:	
Direct	A-5102
Cross	A-5124

PAGE

Peter Olquin:

Direct A-5133
Cross. A-5156
Redirect A-5191

Ronald A. Williams:

Direct A-5197
Cross. A-5248
Redirect A-5301

Samuel A. Kaufman:

Direct A-5316
Cross. A-5328
Redirect A-5356

Geneva Clymer:

Direct A-5358
Cross. A-5387
Redirect A-5420

Charles M. Clymer:

Direct A-5422
Cross. A-5423
Redirect A-5428

Adam P. Sporzynski:

Direct A-5477
Cross. A-5508
Redirect A-5570

Jack Morden:

Direct A-5662
Cross. A-5683

Richard W. Gray:

Direct A-5798
Cross. A-5812
Redirect A-5865

Antonio Reyes-Guerra:

Direct A-5870
Cross. A-5885
Redirect A-5939

PAGE

Witnesses for Defense:

Dick Kent:

Direct A-6268
Cross. A-6286
Redirect A-6293
Recross. A-6294

Tomas William Sennett:

Direct A-6295

John B. Kearney:

Direct A-6323
Cross. A-6343
Redirect A-6417

Raymond Frappier:

Direct A-6422
Cross. A-6437
Redirect A-6458

Hugh J. Graham:

Direct A-6469
Cross. A-6501
Redirect A-6545
Redirect resumed A-6895

Reverend John B. Rupley:

Direct A-6581
Cross. A-6605
Redirect A-6641

Joyce Davis:

Direct A-6659
Cross. A-6689

Reverend E. Scott Byers:

Direct A-6730
Cross. A-6745
Redirect A-6752

Marion Quinn:

Direct A-6754
Cross. A-6772
Redirect A-6782

PAGE

Grete Vives:
Direct A-6785
Cross. A-6805
Redirect A-6831

Grover E. Nash:
Direct A-6836
Cross. A-6845
Redirect A-6855
Recross. A-6857

Ruth Linderman:
Direct A-6859
Cross. A-6874

Ruth V. Mellenbrook:
Direct A-6898
Cross. A-6929

Jose Luis Yguado:
Direct A-6941
Cross. A-7007
Redirect A-7156
Recross. A-7203
Direct resumed A-7278
Cross. A-7290

Government's Summation. A-7505
Defendant Howard Friedman's Summation A-7626
Defendant Henry L. Hoffman's Summation. A-7733
Defendants AMREP Corporation and ATC Realty Corporation's Summation A-7750
Defendant Rio Rancho Estates' Summation A-7767
Defendants Daniel Friedman and Chester Carity's Summation A-7793
Government's Rebuttal Summation A-7891
Court's Charge to Jury. A-7960
Defendants' Requests to Charge. A-8197
Government's Requests to Charge A-8271
Minutes of Sentence A-8357
Indictment 75 Cr. 1023. . . . . A-8397
Defendant AMREP Corporation's Notice of Motion to Sever Defendant Friend. A-8439
Motion Pursuant to Rule 14. . . . . A-8440
Gallantz Affidavit in Support A-8441
Winslow Affidavit in Support. A-8452
Memorandum in Support A-8459
Reply Memorandum in Support of Motion by Defendant AMREP Corporation to Sever Solomon H. Friend. A-8488

PAGE

Friend Notice of Motion to Dismiss or Sever. A-8496
Friend Affidavit in Support. A-8499

I. Parker's Affidavit A-8502

Friend Notice of Motion to Sever A-8504
Glendon Affidavit in Support of Motion for Severance A-8506
Arkin Affidavit in Support A-8531
E.B. Winslow Affidavit in Support. A-8536
Memorandum of Defendant Solomon H. Friend in Support of Motion to Sever A-8543
Friend Memorandum in Support of Motion to Dismiss. A-8583
Friend Memorandum in Support of Motion to Strike A-8601
Friend Reply Memorandum in Support of Motion to Sever A-8616
Friend Reply Affidavit in Support of Motion to Sever . . . .
Friend Reply Affidavit in Support of Motion to Sever A-8628
Arkin Reply Affidavit in Support A-8631
Schreier Affidavit in Support. A-8633
Glendon Reply Affidavit in Support of Defendant Friend's Motion to Sever. A-8634
Winslow Affidavit in Support of Defendant Friend's Motion to Sever. A-8637
Montoya Affidavit in Support of Defendant Friend's Motion to Sever. A-8639
Bertoch Affidavit in Support of Defendant Friend's Motion to Sever. A-8641
Mori Affidavit in Support of the Motion by Soloman H. Friend for a Severance A-8643
Greene Affidavit in Support of the Motion by Solomon H. Friend for a Severance A-8645

PAGE

Lilley Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8647
Schreier Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8649
Parkoff Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8651
Bastone Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8653
Waldman Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8655
Carity and Friedman Notice of Motion for Dismissal of the Indictment, Suppression of Evidence, and Severance of Defendant Friend A-8657
Fleming Affidavit in Support of Motion to Dismiss, Suppress Evidence and Sever a Co-defendant. A-8659
Memorandum in Support. A-8686
Carity and Daniel Friedman Reply Memorandum in Support of Their Motions to Dismiss and Sever. A-8713
Defendants Hoffman and Howard Friedman Notice of Motions A-8726
Defendants Howard W. Friedman and Henry L. Hoffmans' Motions. A-8729
Arkin Affidavit in Support of Defendants' Motions A-8730
Arisohn Affidavit in Support of Defendants' Motion for an in camera Inspection of the Grand Jury Minutes. . . . A-8750
Winslow Affidavit in Support of the Motion of Defendants Howard W. Friedman and Henry L. Hoffman to Dismiss. A-8756
Memorandum of Law in Support of Motions made by Defendants Howard W. Friedman and Henry L. Hoffman. A-8863

PAGE

Reply Memorandum in Support of the Motions of Defendants Howard W. Friedman and Henry L. Hoffman for a Dismissal of the Indictment and an in camera inspection of the Grand Jury Minutes. A-8930

Governments' Table of Authorities. A-8946

Government's Memorandum of Law in Opposition to Defendants' Non-Discovery Motions A-8975

Hynes Affidavit in Opposition to Defendants' Motions. A-9157
Affidavit of Alan J. Kappeler. A-9171
Defendant Friend's Notice of Motion. A-9200
Defendant Friend's Notice of Motion. A-9202
Friend Affidavit in Support of Motion for Reconsideration of Motion for a Severance A-9205
Glendon Affidavit Submitted in Connection with the Annexed Motion. A-9210
Friend Memorandum in Support of Motion for Reargument A-9212
Government's Memorandum of Law in Opposition to Defendant Friend's Renewed Motions for Severance and Dismissal and the Motion of Friend and Rogers and Wells to Permit Rogers and Wells to Withdraw from the case. A-9219
Friend Reply Affidavit A-9227
Arkin Affidavit in Connection with the Renewed Motion of Defendant Friend. A-9233
Gallantz Affidavit in Joining the Renewed Motion for a Severance of Friend A-9236
Lavinsky Affidavit on Renewed Motion for Severance. A-9237
Order to Show Cause for Severance. A-9255

PAGE

Glendon Affidavit in Support of Renewed Motion to Sever A-9257
Friend Memorandum in Support of Renewed Motion to Sever A-9279
Friend Memorandum in Support of Motion for Acquittal, or, Alternatively, for Severance A-9311
Friend Memorandum in Support of his Objection to Admission of Evidence concerning Grand Jury Production of GX66 . . . . A-9361
Lavinsky Affidavit in Opposition to Offer of Grand Jury Testimony of Defendant Friend A-9366
Lavinsky Supplemental Affidavit in Opposition to Offer of Grand Jury Testimony of Friend A-9378
Memorandum in Opposition to the Introduction of the Grand Jury Testimony of Friend in a Joint Trial A-9390
Arkin Affidavit in Opposition A-9405
Objections of Defendants Carity and Daniel Friedman to Prosecution's Further Offer of Friend's Grand Jury Testimony A-9408
Objections of Defendants Carity and Daniel Friedman to Offer of Defendant Friend's Grand Jury Testimony A-9409
Friend Supplemental Objections to Designation of Grand Jury Testimony A-9410
Friend Supplemental Memorandum in Support of Objections to Government Designation of Grand Jury Testimony A-9414
Government's Memorandum of Law in Support of the Admissibility of the Defendant Friend's Grand Jury Testimony A-9420
Arkin Affidavit dated 10/18/76 . . . . A-9451
Friend Supplemental Memorandum in Support of Objections to Government Designation of Grand Jury Testimony A-9454
Friend Reply Memorandum in Support of Objections A-9460
Memorandum of Corporate Defendants Objections to Friend Grand Jury Testimony A-9466

PAGE

Friend Reply Memorandum in Support of Objections A-9468
Weidner Affidavit of Service A-9474
Per Curiam Decision of Second Circuit Court of Appeals A-9475
Friend Objections to Grand Jury Excerpts Designated by the Government for Offer into Evidence A-9487
AMREP Corporation's Objections to the Proffered Grand Jury Testimony of Solomon H. Friend A-9495
Government Response to AMREP's Objections to Friend's Grand Jury Testimony A9504
Friend Amendment to Objections to Grand Jury Excerpts A-9509
Friend Reply Memorandum Relating to Designated Excerpts A-9511
Government Response to Friend's Objections to the Designated Portions of Friend's Grand Jury Testimony A-9519
Notice of Motion A-9527
Arkin Affidavit in Support of Howard Friedman and Hoffman Applications to Sever their Trial from that of the Corporate Defendants A-9528
Memorandum of Law A-9530
Order of The United States Court of Appeals for the Second Circuit on Oct. 26, 1976 . . . . A-9542
Government Memorandum A-9543
Government's Evidence Memorandum on Proof of Misleading Statements in a Mail Fraud Scheme A-9545
Government Memorandum on Defendants' Knowledge of State Disclaimers A-9551
June 30, 1976 - Order Metzner, J. A-9561
July 23, 1976 - Order Metzner, J. A-9564
September 17, 1976 - Order Metzner, J. A-9570
September 17, 1976 - Order Metzner, J. A-9579
October 27, 1976 - Order Metzner, J. A-9581
November 1, 1976 - Order Metzner, J. A-9584
December 30, 1976 - Order Metzner, J. A-9587

.14

PAGE

Government's Trial Brief pp. 10-22 . . . . A-9589
December 30, 1976 - Order Metzner, J. A-9602
Letter from Edward B. Winslow dated
March 3, 1977 . . . . A-9604
Carity and Daniel Friedman Memorandum
In Support of Post Trial Motions A-9608a

A It hasn't been shown to me.

THE COURT: It hasn't been shown to him?

THE WITNESS: I mean, I don't know what it is. I don't know what it is.

THE COURT: Show it to him.

(Handing to witness.)

THE WITNESS: What would you like to know?

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Have you ever seen that?

A No.

Q You say Mr. Simon came with the company in 1973?

A I believe so.

Q I show you Government Exhibit 202 for identification, and ask you if you can recognize that (handing).

A Yes, I can.

Q What do you recognize it to be?

A This is a training manual prepared by Lloyd Simon.

Q Was that a training manual that was used in connection with Rio Rancho Estates?

A If it were -- wherever there are sections pertaining to Rio Rancho, yes. I see in here, yes.

Q When was this manual prepared, to the best of your recollection?

A Probably sometime in 1973.

MS. HYNES: Your Honor, at this time the government will offer pages 669, 676 and 77, 725, 769 and 844 of Government Exhibit 202.

MR. ARKIN: Where do the numbers appear, on the top or the bottom?

MS. HYNES: The top.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Perlmutter, do you know whether this particular manual was used?

A In Lloyd Simon's training classes the manual was used.

MR. ARKIN: We have no objection.

XXX (Government Exhibit No. 202 marked for identification received in evidence.)

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, did you testify in response to Mr. Fleming's question that Mr. Simon's responsibilities were solely Silver Springs Shores? Is that your testimony?

MR. ARKIN: Objection.

THE COURT: She is merely asking him what his testimony was. What is your objection for?

MR. ARKIN: I don't recall any such testimony.

THE COURT: Well, he can say no.

A I believe his -- I believe his function and training was primarily Silver Springs Shores, not in the manual. He prepared a manual, I think, on both parts.

I don't recall him doing any specific training of Rio Rancho. That was somebody else's responsibility. So if he did or not, I'm not sure.

Q Area directors for Rio Rancho and Silver Springs Shores?

A Yes, ma'am.

Q And if a directive went out to the area directors, it went out to all area directors?

A Yes, because many area directors handled both Rio Rancho and Silver Springs Shores.

MS. HYNES: I renew my offer of 530.

THE COURT: Objection overruled.

XXX (Government Exhibit No. 530 marked for identification received in evidence.)

MS. HYNES: Your Honor, may I read from Government Exhibit 530?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit No. 530 in evidence to the jury.)

MS. HYNES: Your Honor, may I read just a part of Government Exhibit 517 in evidence?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 517 in evidence to the jury.)

Q What is an O&O manager?

A That is a manager of an owned and operated office, sales office of Rio Rancho.

Q And they were personally hired, at least as of March, 1972, by Dan Friedman; is that correct?

A That's correct.

Q When a manager of an owned and operated office was hired by Dan Friedman, was he sent to ATC to be trained?

A Usually, yes.

Q Was ATC the most successful office in selling Rio Rancho land?

A Yes, it was.

Q Who ran ATC?

A Originally, from the time I started with the company, it was Peter Miller and Leonard Geller, then it was Leonard Geller by himself and then it was Dan Monaco when

Leonard Geller became an area director.

Q When the owned and operated managers were sent to ATC for training, were they trained by Leonard Geller and Peter Miller, to the best of your knowledge?

A I don't believe specifically by them. Maybe under their direction, but --

Q Under their direction and supervision?

A Yes.

Q You stated that you saw cassette tapes in Mr. Dan Friedman's office.

Did you see any cassette tapes in Mr. Chester Carity's office?

MR. FLEMING: Your Honor, I object to this on the basis of the testimony --

THE COURT: Sustained.

Q I show you what has been marked as 546 in evidence, and as whether you can recognize this (handing).

A Yes, I do.

Q Did you receive this?

A I don't remember if I received a copy of it, but I have seen this.

MS. HYNES: We offer it.

MR. ARKIN: No objection.

XXX (Government Exhibit No. 546 received in evidence.)

Q Mr. Perlmutter, Government Exhibit 546 in evidence says, "to sales personnel from Dan Friedman, vice president of sales, re: audit procedures," and then there is a statement, "date," and that is blank.

Do you know approximately when that memo was distributed?

A Probably in 1973, early 1973, I imagine.

MS. HYNES: May I read from this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 546 in evidence to the jury.)

Q Mr. Perlmutter, did you have any responsibilities in connection with these audit procedures?

A My responsibility was to see that a paragraph was inserted in the salesman's contract -- salesman's agreement stating that they understood and accepted this procedure.

Q Did you work with anyone else in connection with that change in salesman's contract?

A The legal department.

Q ANyone specifically in the legal department?

A It might have been Arthur Mandel.

Q Do you recall having any dealings with Solomon Friend in connection with that?

A No, not particularly that.

Q Did you ever tell a representative of the U.S. Attorney's office that you worked with Solomon Friend on changing the salesman's contracts in connection with the audit procedures inserting that paragraph?

A I don't recall specifically saying Solomon Friend. It might have been. It was the legal department.

I assume that most of my contact in the legal department was with people like Arthur Mandel or David Parkoff and so forth, but it could have been. I'm not saying no.

Q What is your best recollection, Mr. Perlmutter, as to whether you had dealings with Solomon Friend in connection with that change in the salesman's contract?

MR. WEIDNER: I object to it. It has been asked and answered, your Honor.

THE COURT: I will let it be answered again.

A It could have been Mr. Friend on certain portions of it.

THE COURT: Your responsibility with relation to this problem of auditing was to put a clause in the salesman's employment contract, right?

THE WITNESS: That's correct.

THE COURT: That they agreed to such procedures?

THE WITNESS: Yes, sir.

THE COURT: The question is, did you specifically -- now, this is important -- did you specifically speak to Mr. Friend about this, or did you speak with some of these other people whose names you mentioned?

I am talking about the wording of that clause.

You are holding your hands as though you are saying you don't know.

THE WITNESS: I'm trying to recall, your Honor, if on this specific item I spoke to Solomon Friend.

I might have. It's very difficult for me to say whether I spoke to Solomon Friend on this particular thing or I spoke to one of the other attorneys.

THE COURT: All right.

THE WITNESS: I honestly, honestly don't recall. I may have.

THE COURT: All right.

Q Do you recall having any conversations with Mr. Friend in connection with salesmen's contracts?

A At times, yes. I can't -- I can't be specific.

Q You can't recall any of the conversations which you had with --

A Nothing specifically, no, ma'am.

THE COURT: When you say you can't be specific, you mean you can't be specific as to subject matter?

THE WITNESS: Yes, sir.

THE COURT: All right.

Go ahead.

Q Do you recall the substance of any of those conversations?

THE COURT: He has already answered that twice. You asked him and I asked him and he said no.

Q Mr. Perlmutter, Government Exhibit 517 in evidence, the paragraph I read, states that hiring team captains was the responsibility of the managers.

Was it the manager's responsibility, also, to hire sales personnel?

A Yes, ma'am. Either the manager or the team captain.

Q Was there an AMREP management training manual that was distributed to managers in connection with recruiting sales personnel?

A Yes, there was.

Q I show you what has been marked Government Exhibit 752 for identification (handing).

Do you recognize that?

A Yes, I do.

Q Is this the training manual that was distributed?

A I don't know for how long a period of time it was used, but it was distributed,yes.

THE COURT: Can you give us an approximation?

THE WITNESS: How long?

THE COURT: When.

THE WITNESS: When?

There is a date on the top.

THE COURT: All right.

MS. HYNES: I offer it.

THE COURT: Any objection?

MR. ARKIN: I object on the ground of relevancy, if your Honor please.

May we hand it up? Your Honor, can --

THE COURT: I assume Ms. Hynes wants to refer to specific portions of it.

If you are, Ms. Hynes, show Mr. Arkin what portion you are going to sepcifically refer to.

MR. ARKIN: I looked at the clipped portions. If your Honor can look at it very briefly --

MS. HYNES: I offer the entire manual and I --

THE COURT: That requires a side bar conference.

(At the side bar.)

THE COURT: What is your objection?

MR. ARKIN: Your Honor, I skimmed the portion s that Ms. Hynes has clipped and it seems to deal between the differences between tigers and pussy cats. I wish you would look at it -- in types of salesmen.

THE COURT: What portion do you want to read to the jury? Show it to Mr. Arkin and we can talk about it.

MR. FLEMING: I don't understand the relevance of a document about having to do with the hiring of salesmen. I don't know what it has to do with this case.

MR. ARKIN: If your Honor will look at this page (handing).

THE COURT: These are the two portions you want to read?

MS. HYNES: There are more.

(Pause.)

THE COURT: I will sustain the objection.

MS. HYNES: Your Honor, will you look at the cover memo, which says it is the bible and it is the AMREP training manual and that it is to be used?

THE COURT: What has this got to do with this case?

MS. HYNES: Your Honor, it has everything to do in this case in terms of salesmen and pressure techniques --

THE COURT: Objection sustained.

(In open court.)

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, do you know who prepared Government Exhibit 752?

A Yes, I do.

Q Who prepared it?

A This was prepared by Mr. Len Rich.

Q And who is Len Rich?

MR. FLEMING: Your Honor, I object to the questions based on your Honor's ruling.

THE COURT: Sustained.

MS. HYNES: Your Honor, I can probe this to develop --

THE COURT: You have indicated to the court and to counsel the portions you want to read.

I have read them. I have sustained the objection.

(Continued on next page.)

Q You testified earlier, Mr. Perlmutter, about this procedure manual that was distributed to sales offices, is that correct?

A Yes, ma'am.

Q And these were the procedures that were to be used in the various offices, is that correct?

A That's right.

Q I am going to show you Government Exhibit 203 in evidence, paragraph 3, which reads:

"For complete recruiting and training procedures, use the AMREP recruiting and supervision manual and the AMREP trainers guide and training manual."

Referring to Government Exhibit 752, is that the AMREP recruiting manual?

MR. FLEMING: Your Honor, I object.

THE COURT: If you are trying to get in those pages that I ruled out at the side bar, stop it. Go on to something else.

Q Were classified ads placed for sales personnel in various newspapers, Mr. Perlmutter?

A Yes, they were.

Q Who paid for those advertisements?

MR. FLEMING: Your Honor, I object on the grounds of relevance.

THE COURT: Sustained.

Q At the area directors meetings that you testified to, can you tell me who attended those meetings?

A Daniel Friedman and the area directors, Harry Harris, Lloyd Simon, myself at most of them, and other people that came in at different times spent time at some meetings or all meetings, but these are the people that attended, like, every meeting.

Q Did Solomon Friend ever attend an area directors meeting?

A Yes, he did.

Q Did he attend more than one?

A Yes, he did.

Q Did Chester Carity ever attend an area directors meeting?

A A complete meeting or just attend --

Q Did he attend any portion of the meeting?

A Yes, he did.

Q Did he attend a complete area directors meeting?

A No.

Q How frequently did he attend any portion of meetings?

A We have talked -- who are we talking about?

Q Chester Carity.

A A few of the meetings, I don't know how many, he would come in and talk about certain points and then leave.

Q How about Howard Friedman?

A Howard Friedman would come in on occasion to speak to the man, just in general, about the company.

Q What were the points that Chester Carity would cover?

A Mainly party attendance, how to boost the attendance, any special test programs that we were running to see that it got off the ground, how it was doing, test marketing programs.

Q How about closing rates?

A Closing rates was a function of Dan Friedman primarily.

Q Was that discussed at areas directors meetings?

A Yes, it was.

Q Was recruitment discussed at area directors meetings?

A Yes.

Q What was discussed in terms of recruitment that you can recall at area directors meeting?

MR. FLEMING: Same objection, your Honor.

THE COURT: Overruled.

A We discussed if we are going to spend the money to invite X number of people to a dinner reception, that we had to have enough salesmen to cover the tables for these people and it was up to the managers to work recruitment and keep getting the best salesmen, because certain salesmen leave and they have to replace them, so it is an ongoing recruitment.

Q Was there a criteria for the best salesmen to recruit?

A I don't understand the question.

Q Was there any criteria mentioned in connection with recruiting good salesmen?

A No. Basically salesmen that had been in direct selling business before who know direct selling.

Q Was there any discussion about closing rates for salesmen at area directors meetings?

A There was a closing rate that we were looking -- that the company was looking for, yes.

Q What was that closing rate?

A Anywhere --

THE COURT: When you say company, do you mean AMREP?

THE WITNESS: AMREP, yes.

A Anywhere from ten to fifteen percent.

Q Were salesmen evaluated on the basis of their closing rate?

MR. FLEMING: Can we fix times and places, your Honor -- times at least, your Honor.

Are we still at the area director meetings?

THE COURT: I assume the question means generally.

Reframe the question.

Q I am not talking about area director meetings.

THE COURT: You have left the area of area directors meeting?

MS. HYNES: We left it.

Q Were salesmen evaluated on their closing rate?

A That was one of the evaluations, yes.

Q How was that done?

A By looking at the salesman's record. Well, it was really done by the individual manager who had an office to produce X amount of business and if his salesmen didn't produce it, he was the one who was going to have to replace his salesmen or be replaced himself, so it was his responsibility to evaluate his salesmen not only on attendance, on appearances, on knowledge and also how well they do in closing, yes.

Q And if a salesman did not do well in closing rate, then the manager, you say, either had to replace the salesman or the manager would be replaced himself?

A If the salesman didn't do well on a closing rate, it was up to the manager to find out why.

It may have been that the salesman just needed a little talking to, needed a little better training, and based on the manager's discretion, if it didn't work out, he felt he should be replaced, he would replace him,yes.

Q Was there a policy of constantly recruiting new sales personnel?

A Yes, it was an ongoing program.

Q And was this ongoing program of constantly recruiting new sales personnel discussed at area directors meetings?

A From time to time.

Q Have you ever heard of the term "tiger" in connection with a salesman's closing rate?

MR. FLEMING: Objection.

THE COURT: Overruled.

A The word what?

Q Tiger.

A Not that I recall, no, the word tiger.

Q I show you Government Exhibit 725 for identification, and ask you, looking at that, if that refreshes your recollection (handing).

MR. FLEMING: Same objection, your Honor.

THE COURT: The question asked if it refreshed his recollection.

A Yes, I see it in here, in the manual.

THE COURT: Wait a second.

The question was, does it refresh your recollection?

You said you never heard of it.

We are not interested in whether it is in the manual or not, we are interested in whether that refreshes your recollection.

THE WITNESS: Yes, it does.

THE COURT: All right.

Q Mr. Perlmutter, did you have responsibilities for distributing recruiting manuals?

MR. FLEMING: I object, your Honor. We are talking about the same thing.

THE COURT: Overruled.

A Yes, it was part of my responsibility to distribute material.

MS. HYNES: Your Honor, I am separating out from Government Exhibit 752 and now I wi-l offer just a memo, which is a cover memo, for 752 in evidence.

Let me just ask the witness.

Q Mr. Perlmutter, I am showing you what is now 752 for identification, and ask you if you recognize that (handing).

A Yes, I do.

Q What do you recognize it to be?

A It's a memo to all field sales managers from myself on sales manpower recruiting. I sent that out.

MS. HYNES: We offer it.

MR. FLEMING: I object on relevance, your Honor.

THE COURT: Let's see it.

(Handing to the Court)

(Pause)

THE COURT: Objection overruled.

(Government Exhibit 752 received in evidence)

x

Q Mr. Perlmutter, Government Exhibit 752, under recruiting sales power, it says, "Technique for closing the tiger."

What does that refer to?

A I think it referred to a term that the tiger is a customer.

MR. ARKIN: I move to strike it, your Honor.

THE COURT: Overruled.

Q The customer was the tiger?

A I wouldn't -- out of context, I wouldn't know, unless I refreshed my memory with what was behind this.

Q Let me give you what we will mark as Government Exhibit 752-Z for identification.

(Government Exhibit 752-Z marked for identification)

MR. ARKIN: There is already a 752-A in evidence.

Q I show you what has been marked as Government Exhibit 752-Z for identification, and ask you if that refreshes your recollection as to what you are referring to in your memorandum as "Technique for closing a tiger".

(Handing)

A Based on what I read here, the tiger would be the prospective sales person.

MR. ARKIN: I move to strike it, your Honor.

THE COURT: Sustained.

You are being asked a question.

THE COURT: Yes, sir.

THE COURT: You asked to have your recollection refreshed. You read it.

Is your recollection refreshed?

THE WITNESS: Yes, reading this it is refreshed, yes, sir.

THE COURT: All right, his recollection is refreshed.

Put your question to him.

THE WITNESS: Your Honor --

THE COURT: Put the question to him.

MS. HYNES: I am going to put it to him, your Honor.

Q What does "Technique for closing a tiger" refer to?

A It refers to how to hire -- how to hire a salesman through advertisement.

Q And what does the tiger refer to?

A The tiger refers to the person to be interviewed and hired.

Q The sales person?

A The sales person.

Q Who did Len Rich report to?

A Len Rich reported primarily to Daniel Friedman, and on certain marketing tests to Chester Carity.

Q Did you testify that Len Rich attended area directors meetings?

A Yes.

Q Did Mr. Len Rich address area directors meetings on recruiting sales personnel, to the best of your recollection?

A I believe certain portions, yes.

Q And referring to Government Exhibit 752-Z for identification, does that refresh your recollection as to what Mr. Rich said at area directors meetings with respect to recruiting sales personnel?

MR. FLEMING: I didn't know his recollection needed refreshing, your Honor.

THE COURT: Not yet. You haven't asked him what he said. He has not said he does not recall and you have failed to ask the question.

MS. HYNES: I will ask the question, your Honor.

Q Do you recall what Len Rich said at these area directors meetings with respect to recruiting sales personnel?

A He covered topics such as the best way to recruit, the type of individual to look for, where to place the ads in newspapers, what type of ads.

Q What type of individual did he say to look for?

A Somebody who is sharp and alert, somebody who has been in the direct -- in the direct selling business.

Q Did he use the word "tiger"?

A I don't recall him ever using the word tiger at a meeting, no, ma'am.

Q Looking at Government Exhibit 752-Z for identification, was that prepared by Len Rich?

A Yes, it was.

Q Is that a manual on recruiting sales personnel?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Yes, it was.

Q Does it refer to "tiger"?

A Yes, it does.

MR. FLEMING: Objection.

Q Was it distributed to managers?

A Yes, it was.

Q Did you distribute it to managers?

A Yes, I did.

Q Did you refer to that manual -- excuse me.

MS. HYNES: Your HOnor, withdrawn.

Let me read from Government Exhibit 752 in evidence.

(Ms. Hynes read from Government Exhibit 752 in evidence to the jury)

Q What are you referring to as closers, Mr. Perlmutter?

A Salesmen who know how to --

THE COURT: Sell property?

THE WITNESS: Sell property. Complete a transaction.

(Ms. Hynes continued reading from Government Exhibit 752 in evidence to the jury)

Q Does this memorandum outline the items contained in Government Exhibit 752-Z for identification?

A Yes, ma'am.

MS. HYNES: I offer Government Exhibit 752-Z for identification.

MR. FLEMING: I renew my objection, your Honor.

THE COURT: Overruled.

MR. FLEMING: I thought your Honor ruled.

THE COURT: It took a long time to get here, but it is in now.

xx (Government Exhibit 752-Z received

in evidence)

THE COURT: We will adjourn now for lunch.

(Luncheon recess)

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

LAWRENCE PERLMUTTER, resumed.

THE COURT: You may proceed.

MS. HYNES: Your Honor, may I read from a portion of Government Exhibit 752-Z in evidence?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 752-Z in evidence to the jury)

DIRECT EXAMINATION CONTINUED

BY MS. HYNES:

Q Mr. Perlmutter, you testified about area directors meetings. At these area director meetings, were price increases discussed?

A Yes, when one was impending.

Q Were bulletins sent out to sales personnel from time to time concerning price increases?

A Yes, ma'am.

Q Showing you Government Exhibit 993 for identification, 993-A for identification and 991 for identification, do you recognize these?

A Yes, I do.

Q Were these sent to sales managers?

A Yes, ma'am. Not the last one, the last one was addressed to me, I believe. The back part was, yes.

MS. HYNES: The government will offer 993-A, 993 and 991.

(Pause)

MR. ARKIN: Do you wish to offer the handwriting which appears on the documents, too, on the left-hand side?

I have no objection, your Honor, to 991 save for the xerox of the handwriting which appears on various portions of the exhibit. Aside from that we have no objection.

MS. HYNES: We will not offer the handwriting, your Honor.

MR. ARKIN: That will be redacted, Judge.

MR. SPRIZZO: The only objection we have is that there is some mention of Silver Springs which we don't think is relevant.

THE COURT: I haven't seen it. That is 991?

MR. ARKIN: That is 991, yes.

MS. HYNES: Your Honor, we can redact the portions on that also.

THE COURT: All right, it will be received.

(Government Exhibit 991 received in evidence) xxx

MR. ARKIN: Save, your Honor, for some handwriting, again xeroxed on Exhibit 993-A and I believe on a page or two of 993, we have no objection to the exhibits.

THE COURT: They will be redacted.

(Government Exhibits 993 and 993-A received in evidence) x

MS. HYNES: Let me just ask the witness one question with respect to a marking on here.

Q Mr. Perlmutter, with respect to 993-A, do you recognize those initials, the handwriting?

A Not the handwriting. I know the initials, but not the handwriting.

MS. HYNES: We will not offer any handwriting on these documents, your Honor.

THE COURT: Are you breaking up 993 into two exhibits?

MS. HYNES: Yes, your Honor.

THE COURT: All right.

MS. HYNES: Your Honor, may I read from a portion of these?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 993 in evidence to the jury.)

MS. HYNES: Government Exhibit 993-A in evidence --

THE COURT: I think the jury can read that during their recess. You have given them an example of 993.

MS. HYNES: May I read one portion?

THE COURT: The jury can read the entire exhibit during its recess. Next question.

BY MS. HYNES:

Q Mr. Perlmutter, who would make the determination as to when there would be a price increase?

A It would be Chester Carity with some input from Dan Friedman.

Q I show you what has been marked Government Exhibit 854 for identification and 529 for identification. On Government Exhibit 854 do you recognize the signature on that document?

A Yes, I do.

Q On Government Exhibit 529 for identification, do you recognize the handwriting on the attachments?

A Yes, I do.

Q Whose handwriting appears on 529 on the attachments?

A Daniel Friedman.

Q Whose signature is on 854?

A Daniel Friedman.

MS. HYNES: The government offers 854 and 529.

(Pause.)

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q With regard to Government's Exhibit 529 Ms. Hynes asked you if that was the signature of Dan Friedman or the signature appeared on that.

A She asked me about the handwriting.

Q Not the signature?

A The signature on the other one.

Q This is a printed signature-

A Yes, on top of that. It is from a memo pad.

Q Do you know who Jeff is?

A No.

Q Do you know if he hs an attorney?

A I have no idea.

MR. FLEMING: Your Honor, we object to 529.

We have reason to believe it is a communication with an attorney.

THE COURT: Let me see it.

(Pause.)

MR. FLEMING: No objection as to 854 except for the handwriting that appears on it.

THE COURT: Objection overruled to 529.

MR. FLEMING: May we speak to that, then, at the side bar?

(At the side bar.)

THE COURT: Yes.

MR. FLEMING: I was just told, your Honor, and I can't verify that that this Jeff may be an attorney.

THE COURT: Even if he is, he is just saying here are the price increases. There is no request for any legal opinion.

MR. FLEMING: Even on the assumption he is an attorney and you overrule the objection, then I have nothing further to add.

MR. ARKIN: Do you want to take the handwriting off of that?

MR. LAUER: This is before Perlmutter became involved with the sales activities.

THE COURT: All this does is say this is a list of sales increases.

MR. FLEMING: The only objection we have on this one, your Honor, is to handwriting which appears on the first page.

MS. HYNES: Which we will not offer.

MR. FLEMING: And on the second page, a notation which should be erased even further and then this handwriting down here.

THE COURT: Yes.

MS. HYNES: We don't object to that.

(Continued on next page.)

T2A.PM

(In open court.)

XXX

(Government Exhibit Nos. 529 and 854, respectively, were received in evidence.)

MS. HYNES: Your Honor, may I read from 854?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 854 in evidence to the jury.)

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Who is Curt Oler, if you know?

A Curt Oler marked in Albuquerque in administration, primarily handling inventory.

(Ms. Hynes continued reading from Government Exhibit 854 in evidence to the jury.)

Q Mr. Perlmutter, during the period of time when you were employed, have been employed by the company, has the policy of continuing to sell a minimum of two commercial lots per multiple dwelling lots continued?

A I don't know.

Q I show you Government Exhibit 527 for identification (handing).

Did you receive a copy of that memo?

A Yes, I did.

MS. HYNES: I offer 527.

MR. ARKIN: Your Honor, with respect to this exhibit, we have no objections, except for, again, what appears to be some partially erased handwriting on the bottom lower left-hand portion of the exhibit and at the top portion of the exhibit.

I understand Mr. Weidner may have a separate objection.

MR. WEIDNER: We raised an objection --

THE COURT: Let me see it.

(Handing to the court.)

THE COURT: The objection is overruled, but the handwriting will have to be redacted.

XXX (Government Exhibit No. 527 marked for identification received in evidence.)

Q Mr. Perlmutter, did you have any dealings with Chester Carity with respect to implementing price incrases?

A Yes. I was usually called in when a price incrase was decided upon to implement -- to notify all different areas that it was pending.

Q Who called you in?

A Either Mr. Carity or Dan Friedman at different times. Usually it was Dan Friedman that I worked for in this area.

Q Were there times when it was Mr. Carity, however?

A That a price increase was coming, yes, not specifically to implement it. To implement it it would be through Dan Friedman.

Q Tell me what dealings you had with Chester Carity with respect to price increases, if any.

A Dan Friedman would be in the office with Mr. Carity and I would be called in and say, "We are having a price increase," and I would be instructed by Dan Friedman to implement it to let everybody know.

Q And what does that mean, to implement it and let everybody know?

A To implement it means to notify the legal department that we are planning a price increase so they can do what is necessary to, I guess, notify certain regulatory agencies because certain agencies -- certain states had to approve your price increase, changes had to be made to an offering statement.

I would also notify Albuquerque to input the price change into the computer and whatever else they had to do in making changes to prepare for the price increase.

I would notify the advertising department to prepare whatever literature was necessary for updating, changing a price list.

Q Did you notify Mr. Solomon Friend of price increases?

A Yes, I did.

Q Were telegrams sent to sales offices to notify them of price increases?

A Certain price increases, yes.

Q I show you what has been marked Government Exhibit 539 for identification, and ask you if you received this (handing).

A Yes, I did.

Q Can you recognize the handwriting on that document?

A Yes. That's Sherman Lurie's handwriting.

Q Who is Sherman Lurie?

A Sherman Lurie was the director of advertising for AMREP.

MS. HYNES: Your Honor, I will offer parts of 539, the to, from the beginning subject, the paragraph numbered 3, paragraph numbered 7, paragraph numbered 16, and I will agree to redact any handwriting on those paragraphs.

Basically, we can have it retyped, your Honor, and offer those paragraphs.

THE COURT: 3, 7 and 16?

MR. ARKIN: Do you want to go through that again?

MS. HYNES: Yes.

It is in memo form; it is to, from and the subject; the first paragraph on page 1 --

(Continued on next page.)

THE COURT: One, three, seven and sixteen.

MS. HYNES: No. The first paragraph does not have a number. It is an introductory paragraph. It does not have a number.

Then there are a series of numbered paragraphs. I would offer paragraph No. 3, paragraph No. 7, paragraph No. 16, that's it.

(Pause)

MR. ARKIN: Your Honor, we have no objection as to Ms. Hynes' suggestion that the memorandum be retyped, because it is covered throughout with markings and all kinds of things.

THE COURT: All right.

MR. ARKIN: I take it at the time of retyping, if you retype the whole thing in the event we wish to offer portions of it.

THE COURT: I don't understand that.

She will retype it as she has offered to. If you want to offer anything, you retype it and put it in separately.

MR. ARKIN: All right, your Honor.

(Government Exhibit 539 received

xx in evidence)

MS. HYNES: May I read from a portion of this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 539 in evidence to the jury)

Q Mr. Perlmutter, I show you Government Exhibit 991-A, and ask you if you can identify this (handing).

A Yes. This is a telegram that was sent out under Dan Friedman's signature.

MS. HYNES: I offer 991-A.

MR. ARKIN: No objection.

(Government Exhibit 991-A received in evidence)

xx

(Ms. Hynes read from Government Exhibit 539 in evidence to the jury)

Q Mr. Perlmutter, are you familiar with the term "loading"?

A Yes, I am.

Q What is "loading"?

A Loading is selling more than one lot -- selling more than one lot to a customer.

Q Directing your attention to the period of time when you were first employed by the company until the end of March of 1974, were there any guidelines as to how much land you could sell to a customer?

A Not that I recall.

Q Were there any guidelines with respect to how much land you could sell to a customer depending upon their age?

A Not that I recall.

Q You mentioned earlier that you received statistical reports on a VIP program.

A Yes, ma'am.

Q What was the VIP program?

A VIP program was an in-office program. Rather than having groups come in, certain homesite owners were invited in with their referrals to be spoken to and sold. It was more on a personal basis than a group presentation.

Q Who makes policy decisions on marketing?

A On marketing would be Chester Carity.

Q Did you from time to time have any conversations with Howard Friedman in connection with marketing ideas?

A Occasionally.

Q Let me show you what has been marked Government Exhibit 500 for identification, 567 for identification and 555 for identification (handing).

Did you receive copies of these documents?

A Yes.

MS. HYNES: I offer them.

MR. ARKIN: Exhibit 555 we have no objection.

(Government Exhibit 555 received in evidence)

MR. FLEMING: No objection to 500.

(Government Exhibit 500 received in evidence)

MR. ARKIN: As to 567, we have no objection.

I take it you will take the handwriting off the top of the page.

(Government Exhibit 567 received in evidence)

Q Mr. Perlmutter, with respect to Government Exhibit 567, the handwriting at the top, was that on it when you originally received that document, if you recall?

Do you recognize the handwriting, let me ask you that first?

A It looks like Howard Friedman's handwriting.

Q Do you recognize it to be Howard Friedman's handwriting?

A I can't be sure. I can't be sure.

MS. HYNES: We will offer it without the handwriting, your Honor.

THE COURT: It's in.

MS. HYNES: May I read from 555, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 555 in evidence to the jury)

Q Who is Jules Ross, Mr. Perlmutter?

A Jule Ross is the vice-president of finance of AMREP Corporation.

(Ms. Hynes continued reading from Government Exhibit 555 in evidence to the jury)

MS. HYNES: Can I read from a portion of 567?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 567 in evidence to the jury)

Q Mr. Perlmutter, the program that was outlined by Mr. Howard Friedman in this memo, was that ever implemented to your knowledge?

A I don't think so.

Q Do you recall your telling a representative of the United States Attorney's office that the program was implemented for a period of time?

A No, ma'am. I remember saying that we did a program similar to it, not that particular program.

Q What was the program that you did similar to it?

A To contact the local areas from the property where we had closed offices and to bring them out with HSO and referrals, but we didn't work those discounts, as I recall.

Q Other than the discounts, was the program implemented?

A As a test, yes.

MS. HYNES: Your Honor, may I read a portion from 539?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 539 in evidence to the jury)

Q What is the AD number, if you know?

A AD is -- isn't that a Florida approval number, I think.

Q I am asking you, Mr. Perlmutter.

A I am not sure. I believe it is a Florida approval number.

Q This is a Spanish film program?

A It may be for Silver Spring Shores, I don't know.

(Ms. Hynes continued reading from Government Exhibit 539 in evidence to the jury)

Q Who is Richard Essex?

A Richard Essex is the overseas broker in Europe.

Q Is he an owned and operated broker of AMREP?

A No, he is not.

Q Who is Murray Arisohn?

A Murray Arisohn is in charge of international sales.

Q Who does Mr. Arisohn report to?

A Dan Friedman.

Q I show you what has been marked Government Exhibit 357 for identification --

MR. FLEMING: Your Honor. I am sorry, Ms. Hynes. I think Ms. Hynes read an approval given for $20,000 advertising expense.

MS. HYNES: $2,000.

MR. FLEMING: I think ou read $20,000.

THE COURT: You read $20,000.

MS. HYNES: I am sorry, I stand corrected.

MR. FLEMING: That is my interruption. It is $2,000.

MS. HYNES: I am sorry, I stand corrected.

Q Did you receive a copy of 681?

A Yes, I did.

Q Do you recognize 357?

A Yes, I do.

Q Was that utilized in overseas sales?

A Yes, it was.

Q Do you know approximately when this was utilized?

A May I look at a note that I had taken.

Q Do you have notes to refresh your recollection as to when that rider was utilized?

A Yes, I do. That rider was sent out May of 1973.

MR. ARKIN: May we have the notes which Mr. Perlmutter pulled from his pocket marked.

THE COURT: You can come up and look at them, if you want. I won't mark them.

Show him the portion that you used to refresh your recollection.

(Pause)

MS. HYNES: The government offers 681 and 357.

MR. FLEMING: Your Honor, I object to 681 on the grounds of relevance.

THE COURT: Let me see it.

(Pause)

THE COURT: The objection is overruled.

(Government Exhibit 681 received in evidence)

MR. ARKIN: Your Honor, may I inquire on 357 for identification?

THE COURT: Yes.

VOIR DIRE EXAMINATION

XX BY MR. ARKIN:

Q Mr. Perlmutter, you saw that Exhibit 357 for identification, the rider to reservation and so forth, came into existence in May of 1973.

A Yes, according to my distribution sheet, that is when we sent it out.

THE COURT: May of when?

THE WITNESS: 1973.

Q This was utilized throughout the country?

A No, just overseas.

MR. ARKIN: We have no objection.

(Government Exhibit 357 received in evidence) xx

BY MS. HYNES:

Q Mr. Perlmutter, I show you what has been marked for identification 676 and 677.

Did you receive copies of these?

A Yes, I did.

MS. HYNES: I offer 676 and 677.

(Pause)

MR. ARKIN: I understand, if your Honor please, that 676 and 677 were withdrawn during the pre-trial, if your Honor please.

THE COURT: I have no record of that. Pardon me, 667 is withdrawn.

MR. ARKIN: 676, your Honor.

THE COURT: No. 677 was withdrawn, not 676.

MR. ARKIN: We have a relevancy objection to these, your Honor.

THE COURT: Let's see them.

MR. ARKIN: May we hand them up?

(Pause)

THE COURT: I will see counsel at the bench.

(At the side bar)

THE COURT: This record is now filled with these memos from Friedman to Perlmutter or Carity.

What is the purpose of it? If it is to show Mr. Friedman's involvement, you have more than done that.

MS. HYNES: Your Honor, if I can just see these memos.

This on 677 for identification is from Dan Friedman to Chester Carity and it relates to Piedmont International, which is the overseas sale. That is the only memo that refers to Carity.

THE COURT: You have Carity in with 15 or 20 exhibits you put in this afternoon and you have Howard and Dan Friedman and I stop at that point. This is cumulative.

(In open court)

Q Mr. Perlmutter, did you have any conversations with Chester Carity in connection with the sale of Rio Rancho land overseas?

A I don't remember any specific conversations.

Q Would you recall any conversation?

A It could have been, how are we doing or something like that.

Q Did you give him sales figures on overseas sales from time to time?

A Yes.

Q Did you give any other corporate officer sales figures on overseas sales from time to time other than Chester Carity?

A Yes, I did.

Q Who was that?

A Daniel Friedman.

Q Anyone else?

A Occasionally Howard Friedman.

MS. HYNES: Your Honor, may I read from 681?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 681 in evidence to the jury)

Q Who is Piedmont?

A Piedmont was the broker in the United States that handled all overseas business for AMREP.

(Ms. Hynes continued reading from Government Exhibit 681 in evidence to the jury)

Q Mr. Perlmutter, with respect to 357, which is the rider, this was a rider to a reservation and purchase agreement; is that correct?

A Yes, ma'am.

Q This rider was only used in overseas sales?

A Yes, ma'am.

Q Was there any rider similar to that used for sales within the United States that you were aware of?

A A rider, no, ma'am.

Q You say that this was used as of May of 1973, is that correct?

A Yes, ma'am.

MS. HYNES: May I read from this, your Honor?

THE COURT: Yes.

T3B.PM

(Ms. Hynes read from Government Exhibit 357 in evidence to the jury.)

Q Mr. Perlmutter, this rider was used for sales of $30,000 or in excess of $30,000, correct?

A Yes, ma'am.

Q Was there any similar rider used in overseas sales for sales less than $30,000?

A No, ma'am.

Q Do you know why this rider was used for sales of $30,000 or more?

MR. FLEMING: Object to the form of that question.

THE COURT: Overruled.

A Would you please repeat the question.

Q Do you know why this rider was used for sales overseas of $30,000 or more?

A No, ma'am, not specifically.

Q Did you have any conversation with anyone in connection with that rider?

A Just getting it ready to get out, distribution.

Q Who did you have conversations with in getting it out?

A Murray Aronson, Daniel Friedman, it might have been Solomon Friend. I am not sure. The people that were involved in preparing it.

Q Was Daniel Friedman involved in preparing it?

A I don't believe so. Not in the preparation of it, just to see that we get it out.

Q Was Mr. Solomon Friend involved in preparing it?

A I believe so.

Q You said that you had conversations you believe with Mr. Friend in connection with this?

A Just in trying to get the timing to see when it will be ready for distribution.

Q Did you have any conversation with Mr. Friend as to why this rider was being used for sales of $30,000 or more overseas?

A I don't believe so. I don't remember.

Q Didyou ever question him about it?

A No, ma'am.

Q Did you ever have any conversation with Dan Friedman about why this rider was used in overseas sales for purchases of $30,000 or more?

A I don't recall any such conversation.

Q Did you ever question Mr. Dan Friedman about it?

A I don't believe so. This is pretty much a take-off on what we had used in the States for a lesser amount.

Q I asked you if you used any rider domestically.

A Not a rider, but it was part of our procedure.

Q What are you talking about, what procedure are you talking about?

A If there were purchases in excess of $20,000, I think it was, that they had to get certain credit reports from the customers.

Q That is a credit report, correct?

A Yes.

Q So in domestic sales in the United States, if someone bought $20,000 or more, the company required a credit check on that purchaser, is that correct?

A That's correct, yes.

Q This rider is not a credit check, is it?

A No, it is not. It isn't feasible to get a credit check overseas. I don't believe so.

Q My question to you is, do you recall having any conversation with any corporate officer as to why this rider was used in overseas sales?

A No, I don't recall.

Q Was there a procedure if someone purchased land of $50,000 or in excess of $50,000, was there a procedure to be followed?

A Are you referring to in the United States?

Q Yes, in the United States.

A Yes, in the United States there was a special type of credit report that was prepared and sent in to New York to be reviewed.

Q What was that special type of credit report?

A It had more information. Instead of just a s;imple commercial retail credit, it had more information about the individual.

Q Mr. Perlmutter, what is a telephone room?

A A telephone room is basically used in a regular party program, it could be used for confirming that people are coming to the party, it could be used to boost the party. That's when we have a regular mail-out.

If there is no mail-out, it could be used through a cross directory to get the people to a party.

It is also used in the home sit program to contact people and set up appointments for a salesman.

Q You mentioned a cross directory. What is that?

A Telephone directory that gives areas so if you are having a reception in a certain area, you don't contact somebody too far away.

Q Was there a telephone room at the offices of AMREP at any period of time during your employment at

AMREP?

A Yes, there was an ATC phone room at AMREP headquarters.

Q This was during the period of time when ATC was located at AMREP headquarters?

A Yes, ma'am.

Q I believe you testified that was until sometime late in 1972?

A Yes, ma'am.

Q Were there scripts used for the telephone room?

A Yes, there were.

Q Did you ever discuss scripts for the telephone room with Chester Carity?

A On occasion, yes.

Q Did you ever review scripts for the telephone room with Chester Carity?

A I wouldn't review them per se. I would give it to him to review at times.

Q Would he then give them back to you?

A Either give them back to me or send them up to the advertising department for additional corrections, yes.

Q Did he make changes on the scripts that you gave him to review from time to time?

A On some, yes.

Q I show you Government Exhibit 313 for identification and ask you if you recognize that.

A Yes, ma'am. I recognize it.

Q What do you recognize it to be?

A Scripts that were used in certain areas that I had picked up and brought back to New York to be reviewed by Sherman Lurie.

Q These are telephone scripts?

A Yes, ma'am.

MS. HYNES: I offer them.

(Pause.)

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mr. Perlmutter, the covering memo on this is addressed from you to Mr. Sherman Lurie?

A Yes, sir.

Q Do you know whether the documents which are attached were shown to Mr. Carity?

A No, not those specifically; no, I don't remember. I don't know if they were.

THE COURT: These aren't being offered as the ones that this witness discussed with Mr. Carity?

MS. HYNES: I will ask Mr. Perlmutter.

THE COURT: He has already answered that to Mr. Fleming. It was my feeling that you were doing this, that these were coming in to tie up what he discussed with Carity. All right, he did not discuss these with Carity. Go ahead.

MR. FLEMING: I don't ave any objection other than that. Subject to connection.

THE COURT: I will take them.

XXX (Government Exhibit 313 received in evidence.)

THE COURT: Let's see them.

(Pause.)

THE COURT: All right.

MS. HYNES: Your Honor, may I read from a portion of 313?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 313 in evidence to the jury.)

Q I take it RRE refers to Rio Rancho Estates, is that correct, Mr. Perlmutter?

A Yes, ma'am.

THE COURT: I don't think you have to read the scripts which he asked to have standardized. If you have a standardized one, I will take that.

BY MS. HYNES:

Q Mr. Perlmutter, let me ask you. Was that a script that was used in a telephone room?

A Yes, ma'am.

THE COURT: We will have a recess.

Give the jury that document that I said that they could read during the recess.

(Recess.)

(Continued on next page.)

(In the robing room; counsel present.)

THE COURT: Whose application?

MS. HYNES: Your Honor, I have an application.

Your Honor, I would like to elicit from this witness -- this witness had responsibilities for distributing promotional material and has distribution sheets and can testify as to when certain material was distributed and when certain material was discontinued.

After the grand jury investigation began, a few months after the grand jury investigation began, there was distributed a pamphlet, which is this pamphlet, which has been premarked Government Exhibit 370 (handing).

I would like to elicit from this witness that the pamphlet was distributed beginning in August of 1974 and that it was distributed after the grand jury investigation began.

The statements made in this pamphlet are really contrary to all previous statements made about the investment in land, and I would want to point that up.

I would want to point it up, however, in the context that it was issued after a grand jury began its investigation.

MR. ARKIN: We object very strenuously to that, your Honor.

THE COURT: Objection sustained.

(In open court; jury present.)

THE COURT: Proceed.

MS. HYNES: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, you testified about price increases.

When there was a price increase on lots of Rio Rancho Estates, was there a price increase for lots in the core building areas?

A Yes, I'm pretty sure it was across the board.

Q I show you Government Exhibit 908 and 908-A, and ask you if you can identify these (handing).

A Yes, I can.

Q Are these memos from you?

A Yes, they are.

MS. HYNES: I offer 908 and 908-A.

MR. FLEMING: Your Honor, I object as irrelevant, and cumulative, if relevant.

THE COURT: Let me see it.

(Handing to court.)

(Pause.)

THE COURT: I don't see any need for 908-A.

I will let 908 in.

XXX

(Government Exhibit No. 908 marked for identification received in evidence.)

MS. HYNES: Your Honor, may I read from 908?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 908 in evidence to the jury.)

Q Who is Al Lippman?

A Al Lippman at that time was an assistant administrator to Clarence Cummings.

Q Who is Clarence Cummings?

A Clarence Cummings was the controller in charge of administration in Albuquerque.

(Ms. Hynes continued to read from Government Exhibit 908 in evidence to the jury.)

Q Mr. Perlmutter, in Government Exhibit 908 in evidence, the statement appears that customers could receive a trade in of $2,495 as of that date, which is February of 1972, and this memo, which is your memo, it goes on to state, "However, there probably were times when customers owned property whose present one half acre value was in excess of $2,495 and, therefore, they should have received a correspondingly higher credit."

If someone owned a lot which had a higher price than $2,495 and transferred into an exchange area, what, if anything, happened?

A I don't know. I can't explain it.

May I -- this particular memo you are referring to was written by me in early 1972.

In early 1972, I just assumed the administrative function of notifying Albuquerque of a price increase which had been done prior by Dan Friedman.

To the best of my recollection, what I did here is maybe transpose a memo that Danny Friedman had written to me and sent it on to Albuquerque to be done.

I am not familiar how the exchange worked or handled. I never was involved in it.

Q Let me just ask you a few questions and see if you can answer these questions.

To your knowledge, you said that you dealt with sending out notifications of price increases, is that correct, on various lots?

A Yes, ma'am. Yes, ma'am.

Q And the prices of lots outside of the building areas varied, is that correct?

A Yes, ma'am.

Q For example, if a lot was in unit 26, which was very far away from the building area, that was less expensive than a lot that was closer to the building area, is that correct?

A Yes, I believe so.

Q So if someone was exchanging a lot from unit 26, which is the furthest area from the building area, into an exchange area, they just exchanged a lot for a lot in the exchange area, correct?

A I believe that was the practice, yes.

Q Let me take, for example, if that lot was selling at $3,000, they traded into unit 7, correct, as an exchange area?

A Yes.

Q If someone owned a lot, for example, in unit 13, which was closer to the developed area, that would be a higher priced lot, is that correct?

A Yes.

Q And if that lot, for example, were selling for $4500 in unit 13 and that person transferred into unit 7, he would simply give up the lot in unit 13 and transfer into unit 7, is that correct?

A I don't know. I don't know how they worked it if it was a different price.

I believe it was -- I believe it was exchange a lot for a lot, but I really don't know. It's an area I'm just not familiar with.

Q I show you what has been marked Government Exhibit 498 for identification, and ask you if you can recognize the handwriting on the first page of that exhibit (handing).

A Yes, I can.

Q Whose handwriting is that?

A Chester Carity's.

Q And is all of the handwriting on that page Chester Carity's, to the best of your knowledge?

A Yes.

MS. HYNES: I offer 498.

(Pause.)

MR. ARKIN: No objection.

XXX (Government Exhibit No. 498 was received in evidence.)

MS. HYNES: Your Honor, may I just read from a portion of Exhibit 498?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 498 in evidence to the jury.)

Q Mr. Perlmutter, you testified that that is Mr. Carity's handwriting, is that correct?

A That's correct.

(Ms. Hynes continued reading from Government Exhibit 498 in evidence to the jury.)

Q That, again, is Mr. Carity's handwriting, is that correct?

A Yes, ma'am.

(Ms. Hynes continued reading from Government Exhibit 498 in evidence to the jury.)

Q Who is Jim Culgrove?

A Jim Culgrove is public relations at Rio Rancho, and he publishes the newspaper.

Q I show you Government Exhibit 1405 for identification, and ask you if you can identify that (handing).

A Yes, I can.

Q Is this a memo from you?

A Yes, it is.

MS. HYNES: I offer it.

MR. ARKIN: No objection.

XXX (Government Exhibit No. 1405 received in evidence.)

(Continued on next page.)

Q Mr. Perlmutter, I am showing you Government Exhibit 1405 in evidence.

Can you describe the circumstances of how you came to send that memo?

A Yes, ma'am.

An internal memo from one of our competitors-- I don't remember which one -- was circulated by Sol Friend through the office. I went to various people; Chester Carity, Dan Friedman -- I don't remember exactly who was on distribution, but I received a copy.

When I received it, I went in to see Dan Friedman concerning it to find out if anything should be done about it.

Mr. Friend was with Dan Friedman at the time, and I asked them should we do anything with this particular memo, and I was told yes, put this together, basically what's in this internal memo, to send out to the area directors, which I went back and copied it pretty much as what was in there and brought it back.

I don't believe Sol Friend was in when I came back. I spoke to Dan Friedman and gave it to Dan Friedman, then it was given back to me and I sent it out.

Q You are saying that this memo which has been marked in evidence is substantially the same memo that you received which was a memo, an internal memo of a competitor?

A Yes, ma'am.

Q And you copied that memo and then distributed it to --

THE COURT: Ms. Hynes, you really don't have to repeat the witness' statement. It was perfectly clear.

MS. HYNES: Okay, Judge.

May I read this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 1405 in evidence to the jury)

Q Mr. Perlmutter, the five statements that are listed here, had complaints been received in connection with the sale of lots at Rio Rancho Estates, for example, in connection with Item 1, that purchasers could cancel within six months without visiting the property?

A There were some, yes.

Q Were complaints received in connection with the sale of Rio Rancho lots that purchasers did not have to make payments until they wanted to?

A There were some.

Q Were there complaints made to the company in connection with Rio Rancho sales that purchasers did not need a federal property report?

A No, that I don't recall, need a property report. They didn't receive one maybe that means.

Q Your memo says you don't need a federal property report.

A Yes, because I probably copied it, as I say, from something else.

Q Four, were complaints received in connection with the sale of Rio Rancho lots from customers that there was a quick return on their investment in Rio Rancho?

A There were some, yes.

Q And in connection with the fifth,were there complaints received that customers were told that Rio Rancho or AMREP would resell their property at any time?

A There were some, yes.

Q If a customer wrote to AMREP or Rio Rancho with the types of complaints that you have outlined here, what was done with those letters of complaint?

A If the letter came into corporate headquarters, whoever it came into, it would be forwarded, buckslipped to me, and what I would do is either forward it to the local office if we had a local office or to the director of administration at Albuquerque to be handled.

Q Who is the director of administration at

Albuquerque?

A Bob Whalen.

Q And if a complaint came in, you say if there was a local office you would forward the complaint to the local office?

A Yes, ma'am.

Q For example, if it was a complaint involving a sale by ATC, would it be referred to ATC?

A It would be referred to Lenny Geller, yes.

Q Salesmen were paid on a commission basis, is that correct?

A Yes, ma'am.

Q And if a refund was given to a purchaser, was a salesman's commission charged back?

A Yes, it was.

Q Can you explain to the jury what the charge-back means?

A Charge-back means either from his reserve account or from the next sale that he makes the money would be taken back, part of it, a period of time from the sale that was lost.

Q If a complaint such as you have described was sent to an office where you had a local office and was sent to the manager, if a refund was given, was there a charge-back to the manager as well as the salesman?

A Yes, there was. A much smaller percentage, but there was.

Q What instructions, if any, were given to the managers on how to handle these types of complaints?

A The customer should be contacted and find out what the problem was and try to solve it.

Q If the customer wrote to the company and said that at the time they purchased they were told that the company would set up a resale program, what would happen with that complaint?

A If it were at a local office?

Q If it was at a local office.

A Probably the manager would speak to the salesman and find out what the salesman said and then speak to the customer and try to make a determination who was right, who said what, and try to straighten out the problem.

Q Suppose there was a determination that the statement had, in fact, been made to the customer?

A Then if the statement had been made to the customer, then there should have been a refund given to the customer and the salesman should have been fired.

Q Are you aware of any salesman being fired?

A No. It was not an area that I was involved in, salesmen.

Q You referred earlier in your testimony to certain form letters that were sent out upon inquiry by a customer, do you recall that, out of Albuquerque?

A A form letter received by --

Q Let me give you another example.

If a complaint comes into the Albuquerque office, to Mr. Whalen's office, and there is an inquiry about resale --

A Yes, ma'am.

Q What happens?

A If a letter comes in, that the customer is answered in a letter with a standard paragraph that AMREP is not in the resale business and does not resell land.

Q If the customer states to the company that they were told there would be a resale program, there is no refund given?

A Not at that time, no.

THE COURT: He has already described what happens if he got such complaint and he did that a couple of questions ago.

MS. HYNES: Well, I'm not clear, your Honor, on what his testimony is. He just testified about a form letter.

THE COURT: His testimony is abundantly clear, Ms. Hynes. If it was sent to the local office, they would try to work it out. If it was decided that the customer was right, he got his money back and the salesman was fired.

That is what he said.

Q Mr. Perlmutter, let me show you Government Exhibit 1022 for identification (Handing).

Who is Maryann Newman Tansill?

A Maryann Newman was director of customer relations.

MS. HYNES: I offer 1022.

(Pause)

MR. ARKIN: If your Honor please, Mr. Weidner informs me that your Honor has made a pretrial ruling with respect to this document.

THE COURT: Let me see it.

(Handing to the Court)

(Pause)

end t

THE COURT: I have no records of ruling on this in the pretrial. When, what date?

MR. WEIDNER: October 26th, your Honor. Again on the 3rd of November.

(At the side bar)

THE COURT: I have no indication on my list at all.

MR. WEIDNER: Your Honor, the notes on my index show it was discussed on 10/26 and decision was reserved.

A further notation that it cannot be admitted to prove that AMREP represented to customers that there would be a resale program. I don't have the transcript here so I cannot verify the precise page.

THE COURT: Oh, that is your objection?

MR. ARKIN: I said there was a pretrial ruling, your Honor.

THE COURT: I thought I had ruled it out, not its interpretation.

MR. ARKIN: That is all I meant to say, your Honor. I didn't mean to mislead you, your Honor.

THE COURT: Are you offering this to show there was a resale promise?

MS. HYNES: I am offering it to show that when a customer wrote to the company and said they were told that there would be a resale program --

THE COURT: It doesn't say that.

MS. HYNES: Let me back up and say that I would like to explore with this witness, because I don't think this witness' testimony -- I don't think he is testifying that every time a customer wrote and said, I was told that there would be a resale program, that if it was verified that he was told that he would get a refund because that is not what he has told me and I don't believe that is --

THE COURT: That is what he said under oath here.

MS. HYNES: I would like to probe it, your Honor.

THE COURT: This doesn't do it.

MS. HYNES: What I was trying to point out when you told me I couldn't go any further with that line of questioning was when a customer wrote about a resale that the company sent back saying, wait --

THE COURT: That isn't the question. The question was when a representation was made to the customer that there would be a resale. That doesn't show that a representation was made.

MR. FLEMING: There are fifteen letters like in that in the record. This has to do with a request for resale.

MS. HYNES: I can withdraw this offer at this point if I can explore with him the other line of questioning which is what happens when a customer --

MR. FLEMING: He has testified to that.

THE COURT: He has clearly and unequivocally testified to that.

MS. HYNES: Then I am taken by surprise, your Honor.

THE COURT: What did he tell you?

MS. HYNES: This witness told me that when a customer writes to the company and says, I was told that there would be a resale program and I want to resell my lot, that he was not given a refund even if that was verified that that was told to the customer.

THE COURT: Wait a second, there is a difference between a resale program and a promise that he could resell at any time he wanted. There is an indication in this record that the company said to the customers that there would be a resale program eventually is one version or that there would be a resale program when they completed the selling of the property and there you have when that representation was made, either when they had the original buying or the subsequent buy, that is all.

MS. HYNES: Okay.

THE COURT: That is one version.

MS. HYNES: I agree.

THE COURT: That is not a complaint that it was represented to me that I could resell my property at any time.

MS. HYNES: Your Honor, what I am concerned about --

THE COURT: Here is a witness who said they promised me that I could resell it at any time and I made a complaint. That is something different.

MS. HYNES: Your Honor, maybe my memory is not clear as to how the question and answer went. I asked him if a customer wrote to the company and said that they were promised that the company would set up a resale program and if that went to the broker --

THE COURT: You did not put the question that way. I am sorry.

MS. HYNES: Can I explore it then?

THE COURT: No, because that is not the point.

MS. HYNES: The record is inaccurate then.

This is a witness the government has produced and it is an inaccurate record.

THE COURT: I am sorry. You know how to ask the questions. You put it to this witness and he has answered it clearly.

(In open court)

BY MS. HYNES:

Q Mr. Perlmutter, will you describe what guidelines, if any, were given to managers in terms of handling requests for refunds?

MR. FLEMING: Your Honor, we have had that. I object as repetitive.

THE COURT: Sustained.

MS. HYNES: Your Honor, we haven't had guidelines. Was a specific question I asked --

THE COURT: You asked about guidelines at least four pages ago and he said no. You put the question to him.

Q What is Carity-Hoffman Associates?

A An advertising agency for the corporation.

Q Is that an in-house advertising agency?

A Yes, it is.

Q Do they do the advertising for Rio Rancho Estates?

A It is placed through Carity-Hoffman, yes.

Q Does Carity-Hoffman Associates do the promotional material for Rio Rancho Estates?

A I don't think so. Would you please clarify what you mean by promotional material?

Q Promotional pamphlets, are they prepared by Carity-Hoffman?

A I can't answer that question that way. I can say that it is prepared in-house and when it goes to a printer or something it may be billed through Carity-Hoffman. That I don't know. I don't handle the billing.

Q The promotional material --

THE COURT: You are drawing a distinction between who writes it and who prints it?

MS. HYNES: I am concerned with who writes it.

A It is written in-house at AMREP.

Q Mr. Perlmutter, I am going to show you Exhibit 632 and ask if you can identify the handwriting on that?

A Yes, I can.

Q Whose handwriting is that?

A That is Chester Carity's.

Q I show you Government Exhibit 565 for

identification.

Can you recognize that handwriting?

A Yes, I can.

Q Whose handwriting is it?

A Howard Friedman's.

Q I show you Government Exhibit 596 for identification.

I ask you if you can recognize whose handwriting that is?

A This top handwriting is Daniel Friedman's. This (indicating) I don't know.

Is there anything else?

MS. HYNES: For the record the witness is referring to --

THE COURT: Why don't we do one at a time and then the record will be easier to follow.

MS. HYNES: This is one exhibit, your Honor. It is just two different handwritings on it.

The handwriting at the top of the page the witness is able to identify.

Q Correct?

A Yes, ma'am.

Q In the middle of the page you are not able to identify?

A No.

Q What about the second page?

A That is Chester Carity's.

Q Can you identify the handwriting on 487?

THE COURT: Let's do one at a time. One exhibit at a time.

A I believe that is Sherman Lurie's writing.

THE COURT: Hold it. What is the first one you have got there?

MS. HYNES: He already identified the handwriting.

THE COURT: Give it to defense counsel.

MS. HYNES: Your Honor, I am not offering these at this time. I am simply identifying handwriting on them. I would need further foundation to offer them.

Q 487.

A That is Sherman Lurie's.

Q I show you Government Exhibit 872 for identification. You testified that Maryann Newman was director of customer relations, is that right?

A Yes.

MS. HYNES: I offer 872.

(Pause)

MR. ARKIN: As I understand, your Honor, this one was out by stipulation, that is 872.

THE COURT: That is right.

On October 29th.

MS. HYNES: Your Honor, I am offering it at this time.

THE COURT: You withdrew it.

MS. HYNES: In light of the testimony I am offering it at this time.

THE COURT: Let me see it.

(Pause)

MR. FLEMING: I object based upon the pretrial proceedings and based upon the competency of the document and hearsay, your Honor. It is not relevant.

(Pause)

THE COURT: Objection sustained.

MS. HYNES: With respect to the hearsay, the government is offering it on notice and not for the truth of its contents.

THE COURT: Objection sustained.

Q Mr. Perlmutter, did there come a time when Mr. Friend left the legal department?

A I don't understand the term "left". I don't think he ever left the legal department.

Q Did there come a time -- withdrawn.

Did Mr. Friend have responsibilities aside from that of being general counsel?

A Yes.

Q What were those responsibilities?

A He was a corporate officer in charge of development and construction.

Q Where was the legal department located in AMREP?

A On the seventh floor.

Q Where was Mr. -- was Mr. Friend's office on the seventh floor for a period of time?

A Yes, it was.

Q For what period of time, if you know?

A I would just have to guess.

MR. WEIDNER: Object to any guessing, your Honor.

THE COURT: I will take his guess.

A Can I answer?

THE COURT: Yes.

A Sorry. From the time he came to the company I would say until late '72.

Q In late '72 what happened?

A In late '72 Mr. Friend moved up to the eighth floor.

Q What offices are on the eighth floor?

A All the corporate offices. The corporate headquarters.

Q Whose offices were on the eighth floor?

A Mr. Howard Friedman, Mr. Carity, Mr. Dan Friedman, Mr. Friend, Mr. Hoffman, Mr. Ross, Mr. Roberts, myself, the architectural department, the personnel department.

Q Who was on the executive committee?

A The executive committee was Howard Friedman, Chester Carity and Irving Blum.

Q Was there a distribution list for promotional material?

A Internally you are referring to?

Q Yes.

A Yes, ma'am.

Q Who was on the distribution list for promotional material?

MR. FLEMING: Do you have the list? I object to it as not the best evidence, if your Honor please.

THE COURT: If he knows the names on the list, I will take it.

MR. WEIDNER: May we have a time fixed, your Honor?

THE COURT: Yes. We need a time. You were there for a long time.

THE WITNESS: I got involved in putting together literature, putting together a book in I believe it was 1973.

THE COURT: What sort of a book?

THE WITNESS: A literature book of all the literature that we used.

If you are referring to that book, I can tell you --

Q Let's take that book.

Who, if anyone, received that book that you have described with all the literature?

A Daniel Friedman, Chester Carity and Sol Friend and the advertising department got a copy.

Q Prior to 1973 was there something known as a distribution list for promotional material apart from this book?

A I don't believe so.

Q If there wasn't a list, was promotional material distributed to individuals regularly?

A No, not that I know of.

I am sorry, may I correct -- I am thinking to myself. This book was put together earlier than 1973.

This book was put together probably in '72, early '72 and was distributed. I am trying to remember the timing.

Q Did part of your responsibilities with the company include traveling to Albuquerque from time to time?

A Yes, ma'am.

Q When for the first time did you visit Albuquerque?

A 1969. Soon after I joined the company.

Q Approximately how many times per year have you visited Albuquerque since then?

A Maybe six times a year, five, six times a year.

Q When was the last time you visited Albuquerque?

A A few weeks ago.

Q Pardon?

A A few weeks ago.

Q From 1969 to a few weeks ago you have seen Albuquerque grow?

A Yes, Albuquerque has grown.

Q Where has that growth been?

A All over.

Q Do you have a daughter who lives at Rio Rancho Estates?

A Yes, I do.

Q Do you own a condominium at Rio Rancho Estates?

A Yes, I do.

Q Did your daughter live in the northeast section of Albuquerque for a period of time?

A Yes, she did.

Q Did you have occasion to visit her in the northeast sectionof Albuquerque?

A Yes, I did.

Q Approximately when did she live there?

A I would say during probably -- maybe late '73 to the beginning of '74 for a period of time.

Q Have you seen growth in the northeast section of Albuquerque?

THE COURT: I would think you have better witnesses than this one to testify about growth and where it actually occurred, Ms. Hynes.

MS. HYNES: This is an officer of the corporation, your Honor.

THE COURT: Let's go on to something else.

Q Mr. Perlmutter, do you believe that the only direction that Albuquerque can grow is to and through Rio Rancho Estates?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Is your son-in-law employed by Rio Rancho Estates?

A Yes, he is.

Q In what capacity?

A As administrator in the construction department.

Q How long has he been employed by Rio Rancho Estates?

MR. FLEMING: I object to the relevance of this, if your Honor please.

THE COURT: Sustained.

Q Mr. Perlmutter, I am going to show you a pamphlet which has been marked Government Exhibit 389 for identification. I will also show you a pamphlet which has been marked 388 in evidence.

A May I refer again to my notes?

Q Yes. When looking at Government Exhibit 388 in evidence, can you tell up until what period of time that pamphlet was used?

A 3-73-1 was used prior to 5/72.

THE COURT: What's that? Say that again.

What period of time was Exhibit 388 used? Give me the opening date and the closing date, if you know.

Q Do you know when 388 began to be used?

A No, ma'am.

Q Do you know when 388 was replaced?

A Yes, I do.

Q When was it replaced?

A In May of 1972.

Q Was it replaced by Government Exhibit 389?

A Yes, it was.

MR. FLEMING: Is that May or later?

THE COURT: May. Are you offering 389?

MS. HYNES: Iwill offer 389, your Honor.

(Pause.)

MR. FLEMING: We have no objection, but I think we should use a better copy. The page fell out.

THE COURT: All right.

XXX (Government Exhibit 389 received in evidence.)

Q Mr. Perlmutter, did there come a time when the pamphlet This is My Land was discontinued?

A Yes, ma'am.

Q Do you recall approximately when that was?

A At the time of the HUD regulations, I believe.

MR. FLEMING: May we have a time?

THE COURT: Do you have a date?

THE WITNESS: I am sorry, I didn't hear that question.

THE COURT: When?

THE WITNESS: The end of 1973.

THE COURT: All right.

Q I show you Government Exhibit 239 for identification. Can you tell by looking at that when that was used?

A Yes, ma'am, it was used from March of 1970 and discontinued April of 1974.

MS. HYNES: I offer 239.

(Pause.)

MR. FLEMING: Is his last answer related to this, 239?

MS. HYNES: Yes.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Perlmutter, with respect to 239 for identification, would an AD number upon the document indicate that it was used at Silver Springs Shores?

A Yes.

Q This particular document then with an AD number would be used at Silver Springs Shores?

A May I see it again? I can tell better.

MR. ARKIN: You may.

THE COURT: Is the objection this was not used in connection with Rio Rancho.

MR. ARKIN: I withdraw that objection. There is an NYA number on it also. I withdraw that objection. There are two numbers on it.

XXX (Government Exhibit 239 received in evidence.)

MR. ARKIN: Wait a minute, my advisors told me that NYA numbers have also been for Florida. The objection would be if that was used at Silver Springs or not.

THE WITNESS: If I can see it, your Honor, I can probably tell.

This was used both at Rio Rancho and Silver

Springs. It has RR/SS.

THE COURT: How much more do you have with this witness?

MS. HYNES: Your Honor, I have probably another half hour.

THE COURT: We will adjourn until tomorrow morning at 10:00.

(Jury left the courtroom.)

MR. DEVORKIN: Mr. Arkin and I have a matter that we both agree I think we should take up before tomorrow.

MR. ARKIN: We have a matter. I don't really agree we should take it up now at 5:00 at night.

THE COURT: Why not? Do you want to do it at 9:30 in the morning?

MR. ARKIN: I wuld prefer doing it in the morning myself. I am happy to do it now. I will do it now. Nevermind, excuse me.

MR. DEVORKIN: The matter relates to the photographs that were involved in the mosaic that has already been the subject of some testimony by Mrs. McCorkle.

It is my expectation that sometime tomorrow we will put a witness on the stand who made the various mosaics from various photographs that are the result of aerial photography taken in various years over Albuquerque and Rainbow Lakes Estates in Florida -- not taken in conjunction with this case, but just photographs taken by various departments of the United States in conjunction with their work that they normally do.

For each photograph used to make up the mosaic, I have a certified copy of the photograph on file with the appropriate agency of the United States. It is either the Department of Agriculture or the geological survey.

The certificate states the date it was flown and in some cases the county that was flown over. I have another certificate which gives the latitude and longitude of the various Albuquerque photographs.

The certificates themselves do not have the height that the plane flew over the ground.

In response to your Honor's direction the other day I called each of the appropriate agencies or had somebody in our office call each of the appropriate agencies to inquire what their records showed as to the height that the particular photographs we requested from them were and I have those heights.

I will make a representation as to what they are. If it is required, I will bring the file clerk down from Washington -- I think one is from Texas and one is from Maryland but I am not quite sure.

THE COURT: Mr. Arkin, isn't that satisfactory if he makes the representation?

MR. ARKIN: Your Honor, I have no quarrel with the difference between Mr. Devorkin's representation and that of a file clerk. That is not my problem.

My problsm is that with respect to these photographs I should like the opportunity to cross examine the person who took them as to the conditions and as to the way they were taken, the type of camera which was used, the method of photography, the altitude. The fact that a file clerk has on file in some file drawer the purported altitude, that does not satisfy me.

I look for example at the mosaic --

THE COURT: This comes from an official file and certified as such.

MR. ARKIN: I understand, your Honor, what an official file means. That does not assure me that the height in the official file will be accurate.

THE COURT: It is accurate enough to get it into evidence if it is property certified.

MR. ARKIN: Your Honor, the problem is --

THE COURT: What's the problem about the type of camera?

MR. ARKIN: If you have the mosaic which the government has put together, it is in my view one which is singularly and intentionally unattractive and made so. I should like the opportunity to attach, if you will, in terms of the weight of this particular exhibit the way it was put together, the person who put it together, the person who took the pictures and just to have -- I certainly, if your Honor is going to rule that the exhibit comes in --

THE COURT: When were the pictures taken? Let's take the Albuquerque mosaic.

MR. DEVORKIN: The pictures were taken '59, '67, '75. The person who put the mosaic together using the prints on file with the government is going to testify. Mr. Arkin can ask him as much as he wants as to how he put it together and whether or not --

THE COURT: Why were these pictures taken?

MR. DEVORKIN: The geological survey, as I understand it, from time to time takes aerial photography of all kinds of sections of the United States in conjunction with their functions.

THE COURT: But it wasn't taken in conjunction with this lawsuit?

MR. DEVORKIN: No. Those photographs are

available to anybody including the defense for purchase. That's what we did, we purchased them from the geological survey.

The same thing is true with the others which are Department of Agriculture photographs. Those are taken, as I understand it, for purposes of soil conservation.

THE COURT: I had a problem with the altitude, A, unless they were all taken at the same altitude, the mosaic is not a true representation. That's number one.

Secondly, the altitude has a great deal to do with what you can see. A picture taken from 2,000 feet is entirely different from one taken from 10 or 20,000 feet. While it might represent what you could see from 20,000 feet, as far as I am concerned, it's a practically useless photograph as having any probative value.

I would so rule.

MR. DEVORKIN: Can I respond, your Honor?

THE COURT: Yes.

MR. DEVORKIN: First of all, as I believe Mr. Woodward who is the man who made the mosaic would testify that he is fully qualified in aeiral photography and does it all over the country, if I may say so, it really from the point of view of putting a mosaic together, mapping a particular area, it doesn't necessarily make a difference

eojb 11

that there is a different altitude. It is for this reason.

We have pictures which I don't think we are going to use which are NASA photographs. They are taken from I think 500 miles up in the air. Those photographs maybe because of the quality of the camera being used, satellite, may show more than a photograph you take from 1,000 feet. It just depends on the quality of the equipment you are using.

(Continued on next page.)

THE COURT: Now what you are doing is sustaining Mr. Arkin's position.

He wants that photograph on the stand to cross examine him.

MR. DEVORKIN: The point, your Honor, is that the mosaics, when you look at the mosaics, we submit, in essence, to a probative extent they speak for themselves. You can see --

THE COURT: Anything is probative of that, but the question is, am I going ot let it in because it really has any weight that the jury should give it.

MR. DEVORKIN: I agree with the criteria your Honor set. But I think when you look at the mosaic, the mosaic is sufficiently detailed, sufficiently clear of what one can see in the Albuquerque area as to be probative.

THE COURT: If you are going to put a man on the stand who is familiar with the type of camera used, number one, and the altitudes from which the picture was taken and I would assume that weather conditions would have something to do with it as to what sort of a picture you get on the way it is now or cloudy or sunny so that Mr. Arkin can cross examine that man, I would say fine.

But unless you are going to have somebody who can do that, there are too many variables.

MR. DEVORKIN: Your Honor, my suggestion would be this:

I have individual photographs here, but the mosaics are large and I didn't bring them down from the office this afternoon.

I think it is important to look at the mosaics themselves.

I think the variables that your Honor is suggesting, when you look at the mosaics, don't really undercut the weight of the particular mosaics we are talking about.

THE COURT: But Mr. Arkin is entitled to cross examine the person knowledgeable so he can turn to the jury and say, "Don't give any weight to this."

You are taking away that right from him.

MR. DEVORKIN: Your Honor, may I make these points:

First of all, as to the Albuquerque photographs --

THE COURT: That is all I am aware of, the Albuquerque ones.

MR. DEVORKIN: There are other photographs of Rainbow Lakes Estates.

gtjw 3

As to the Albuquerque photographs, Mr. Woodward himself has recently flown over the entire Albuquerque area and will identify various physical features on the mosaics that he sees that were there when he flew over the area. He flew in a helicopter at, I believe, 6,000 feet above the ground.

He can identify features that are in the area that show that the mosaic is a fair and accurate representation of what you can see from the air.

Now, Mr. Woodward was not --

THE COURT: But it is a great difference what you see at 5,000 feet and what you see at 20,000 feet. That is point number one.

Point number two, I gather from what you said that the type of camera used could make the picture taken from 10,000 or 20,000 feet appear as though it were taken from 5,000 feet.

MR. DEVORKIN: No. What I am saving, your Honor, is the features --

THE COURT: And Mr. Arkin would have a right to take that to the jury.

MR. DEVORKIN: Your Honor, all I am saying is that the features that are there on the ground are represented in the picture. There isn't distortion. Those features are on the ground. You can see them.

We are not talking about people walking on the street.

THE COURT: Mr. Devorkin, I have dealt with photographs taken by experts in the personal negligence field for seventeen years on this bench, plus ten years across the street in the State Supreme Court, and let me tell you that you can take a picture and I can take a picture of what was supposed to have been the same point and nobody would believe that you were in Brooklyn and I was in the Bronx when the picture was actually taken at 103rd Street and Fifth Avenue.

MS. HYNES: Your Honor, I think that what we have got to do here --

THE COURT: Mr. Arkin cannot be denied the right to bring that to the attention of the jury, and it has to be done through your putting on the stand someone who is going to testify to create the impression that you want created from the picture so that he may cross examine that person.

End of the discussion as of today.

I have another matter waiting since a quarter to four. They are sitting right there. We continue it tomorrow morning.

gtjw 5

(Pause)

THE COURT: Mr. Hoffinger?

MR. HOFFINGER: If your Honor please, Mr. Blum requests that he be excused on Friday. He wants to take his wife to the doctor. His wife has emphysema and the cold weater has been particularly bad. He is not feeling so hot himself.

I was wonder if we can get him out on Friday.

THE COURT: You heard what Mr. Hoffinger has just said?

DEFENDANT BLUM: Yes, your Honor.

THE COURT: And he correctly represents your feeling in the matter?

DEFENDANT BLUM: Yes.

THE COURT: You ask to absent yourself on Friday for the reason Mr. Hoffinger has stated?

DEFENDANT BLUM: Yes.

THE COURT: Do you have any objection, Ms. Hynes?

MS. HYNES: Your Honor, as long as he waives-- if something comes up and his name is mentioned on Friday, I have no idea at this point whether it will be or not, but as long as he understands --

THE COURT: You understand you run that

risk?

DEFENDANT BLUM: Yes.

MR. HOFFINGER: I understand it, too.

(Adjourned to Thursday, December 2, 1976, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Lawrence Perlmutter (Resumed)	3198			

EXHIBIT INDEX

Government	Identification	In Evidence
749-A	3200	
749		3204
750		3207
203		3209
749-B		3209
203-B		3210
1046		3214
540		3215
517		3237
530		3246
546		3248
752-Z	3264	3268
991,993,993-A		3272
527		3278
539		3282
991-A		3283
555,567,500		3285
357		3291
313		3301
498		3308
1405		3309
389		3333
239		3334

GTjw 1

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 2, 1976
10:00 A.M.

Trial Resumed

(In open court - jury not present)

MR. DEVORKIN: Your Honor, we have brought the mosaics down to court today that we were discussing yesterday afternoon for the purpose of showing them to your Honor and setting forth, I hope, clearly what we think the mosaics show and why they should be introduced or admitted into evidence.

THE COURT: I thought the objection was not what they showed, the objection is, how were they taken?

My looking at them isn't going to help.

MR. DEVORKIN: I think I was not clear yesterday in explaining what we are offering them to prove. I think if I do that, I don't think Mr. Arkin's objection is valid as to the admissibility of the photographs and I will explain why.

May I show the mosaics to your Honor?

THE COURT: Don't show me. Tell me how they were taken and how they were put together. That is Mr. Arkin's objection.

MR. DEVORKIN: Okay.

May I just say first, your Honor, that we are not offering the photographs to show what a particular object on the ground looks like from any given altitude.

We are offering them to show comparisons from one year to the next, and we have used three years because those were the available photographs, of the comparisons of Albuquerque over the time that Rio Rancho was sold and the comparison of Rio Rancho over the time that Rio Rancho was sold.

Now, the photographs -- and we think, and I will explain how they were taken and how they were put together.

We think and submit that with the scales of distances that will be placed on the photographs and with the testimony of the person who put the mosaics together that they are a fair and accurate representation of distances and locations of areas of Albuquerque on the ground.

As to that purpose, they are fair and accurate.

Now, the photographs were taken as follows, as I understand it.

gtjw 3

Last night after talking in court, we went back and we endeavored to reach each of the agencies that supplied the photographs. Somebody is on the phone with someone from one of the other agencies.

So far, what we have been able to determine is that photographs were taken in three different years, basically.

I will be able, I believe, to determine the make of the camera used to take the photograph, the exact lens type and lens number that was used to take the photograph that the government contracted out to, and I believe with respect to some of the photographs the weather conditions on the date that the particular photograph was taken.

Now, the gentleman who made the mosaics or supervised the mosaics will testify as follows:

He is an aerial photographer, he has done aerial photography work over a long number of years, sometimes on contract for the government. He is fully familiar with the field of aerial photography.

He will testify, for example, that Geological Survey is in the business of making such photographs for the purpose of making highly accurate two and three dimensional maps of areas all over the United States, and those maps are used for airplane flights and so forth. They are extremely accurate maps.

In order to take an aerial photograph for the Geological Survey or for I believe the other agencies involved with the photographs, you have to submit a bid and you have to use a camera and a lens which has been submitted to the Bureau of Standards of the United States for calibration.

Mr. Woodward, who is the witness, is fully familiar with the camerasthat were used to take these pictures. He knows what those camerasare, he knows what those lenses are, he knows what the capabilities are and so forth.

He will testify that the calibration of the lens as to its accuracy is extremely high. I think he told me over the phone last night the map that is made from these photographs has to be accurate within 1/27th of an inch.

These are the photographs Geological Survey used to make those kind of maps. And the cameras that were used to make these kinds of photographs are these highly accurate cameras and lenses, and he is also in a position to tell the Court and the jury that the lenses, there are no distortions involved in the lenses that would misrepresent something on the ground.

He is also in a position to testify that based on his experience in aerial photography, independent of having any weather reports from the flights involved, he can tell what the weather conditions were on the date those pictures were taken, because he can testify to cloud shadows not being there, there would be cloud formations and so forth.

He is also in a position to testify that he has flown over the city of Albuquerque at, recently, about 6,000 feet; that the physical features, the faults, the mountains and so forth, on these photographs, which have not changed over time, are accurate in terms of the distances and the scale they are on these mosaics.

Now, he will testify -- let me just jump ahead just one second before I tell how the mosaics were made.

There will be other witnesses who are familiar with the Albuquerque area, who live in the Albuquerque area who are with various governmental bodies out there, council of governments and so forth, who have looked at the mosaics we have prepared, and they have familiarity with the Albuquerque area and they will be in a position to testify that the distances represented on there between points that they know are in Albuquerque are accurate distances and it is the scale that we are giving for those distances that Mr. Woodward calculated is an accurate scale, and the objects that they see on the photographs, not the physical features but man-made developments, are where they are in relation to other objects as they know Albuquerque.

In fact, one of the gentlemen looked at one of the mosaics for 1959 and he saw his house under construction, his own house, without the roof on it at the time he was constructing it. It is where it should be on the map.

In addition to that, he checked the distances and he knows them and they were accurate according to the scale we said the mosaic was taken at.

Mr. Woodward will testify that independent of the altitude and the cameras, he took an accurate map which had distances of this area and using those distances he calculated the scale of each of the mosaics,

I think one of them down to something like one inch equals 1,920 feet and that that is an accurate scale of these mosaics and accurately represents the distances between different points on those mosaics.

As to how the mosaics were made, Mr. Woodward will testify that normally in aerial photography the airplane makes a run continuously over a distance taking single photographs which overlap greatly. I'm not sure how much, but sometimes as much as up to a half, I understand. It makes a series of runs to cover an area like that.

To make a mosaic like this, which is then used to make a map, there are basically two methods:

For extremely high accuracy maps, you can use a relatively more expensive method with certain kinds of plotting using every single photograph and calculating the distances as you lay the pictures down and fit them in.

Another accepted way of doing it when you don't need that exact precise accuracy and less expensive way is to take alternate photographs. They still overlap each other in terms of the features that they are photographs of, but they don't overlap as much.

You lay those photographs down, you match up physical features as they run from one photograph to the other until you have every photograph where it should be with all the physical features lined up perfectly, you mount it, as he did in this case, you mount all the pictures firmly in one place and then you take a picture of it and you've got an accurate representation of what is on the ground there.

That is what he did in this case.

He has then correlated that to a prior existing map with known distances on it.

In addition to that, he can do a doublecheck on that, because he knows from my representations the focal length of the camera and the altitude above ground the picture was taken and he can calculate the scale of the map solely on the basis of those figures, and he has done that, also.

We think for all of those reasons, and there are cases, we believe, which support our position which we will be happy to give your Honor, that the government is in a position to establish a prima facie case for admissibility, namely, that the mosaics are an accurate representation of the scene in question, and that is the only burden we have.

The opposing party, under the case -- I am referring to United States v. Hobbs, 403 Fed. 2d 977 in the Second Circuit, which has been cited by the Second Circuit in Mikus v. United States at 433 Fed. 2d 719, the opposing party can use voir dire and independent evidence to attack the accuracy of the representation that this isn't the Albuquerque area, this isn't how the Albuquerque area looks or the distances aren't accurate, but we think our proof establishes a prima facie case that the distances are accurate.

THE COURT: Mr. Arkin.

MR. ARKIN: Yes.

If your Honor please, we are talking about pictures, not maps, and in terms of accuracy of distance, that is only one aspect, one element of what a picture portrayed.

As your Honor recognized yesterday, the very same picture, albeit it may reflect accurate distances, can appear it is on a valley on the moon or Manhattan, depending on who takes it.

Last night I took the precaution of speaking to an expert in photography who had a lot of experience in this who said to me you can accurately reflect any area and depending on your point of view and what your charge is and your contract, so to speak, you can make a piece of land look like Monte Carlo or the Sahara Desert and it would be the very same piece of land.

What I am concerned with here is that the pictures which the prosecution seeks to introduce are dynamically unattractive, and I would hope to show with respect to cross examining the people who took them and prepared them that intentionally so.

It is my view that that is such an important item, such an important exhibit, that merely to have them admitted based upon Mr. Devorkin's representations as to lens and camera and film and distance really does not take me the distance which I am fairly entitled to be taken.

Now, I cannot cross examine Mr. Devorkin in this proceeding --

tla

THE COURT: He didn't ask you to. He asked you to cross examine the witnesses.

MR. ARKIN: Mr. Woodward, if your Honor please, did not take the pictures. Mr. Woodward was not there the day the pictures were taken.

Albeit he can say there are no cloud shadows, for example, there are many other types of weather conditions, moisture in the air and so forth, which will reflect differently on different kinds of cameras.

What I am saying is that the technical aspects of taking aerial photographs are such that what comes out of the camera at the other end can affect very dramatically, monumentally, depending on how it is taken, when it is taken and so forth, and it seems to me while I certainly don't want to add to the number of witnesses which this trial has, I assure your Honor of that, that these particular exhibits over here are very important, because when you have a jury and a jury sees this monochromatic whatever it is, collage or montage prepared by the prosecution which, you know, has this -- this looks like it was taken by the NASA satellite above the moon -- it is obviously going to have an impact on that.

Unless I can blunt that on their case on cross examination, with my friend Mr. Fleming blunting it on cross examination on their case, I think we are put in a very untenable position.

THE COURT: Why don't you address yourself to admissibility.

MR. ARKIN: If your Honor please, I believe --

THE COURT: You are talking about weight now. I am talking about admissibility.

MR. ARKIN: Yes, your Honor.

I believe that there comes a point where weight crosses the threshhold and admissibility becomes the issue, and I believe that here the nature of the photographs are such that the very questions I would ask which your Honor quite properly says goes in some respects to weight goes to admissibility.

Accuracy is not, just as Mr. Devorkin insists, distance or gauge, accuracy has to do with light, it has to do with appearance, it has to do with texture, it has to do with feel.

These photographs over here, I can't say whether or not it is 1,920 feet to the inch or not. That is the kind of thing you can do on a map.

You can have a map drawn. You can have Shell Gas Stations give you a map.

These are pictures and they come in as pictures, they don't come in as maps.

If Mr. Devorkin is concerned about distances, I very respectfully suggest what he does is have a map produced. A map shows distances. A picture is meant to show color, feeling, textures. And I say these particular pictures over here I have a right to go on the issue of admissibility as to why the appearance appears as it does here, why it looks like it does here, why was it taken at 11,000 feet, what happened, what kind of moisture layers were in between.

THE COURT: I gather these pictures weren't taken for the purpose of this lawsuit.

MR. DEVORKIN: That's correct, your Honor.

MR. ARKIN: If your Honor please, they may not have been taken for the purpose of this particular lawsuit; on the other hand, you know, there are a lot of pictures taken at various times over the years -- I don't know for what purpose they were taken for, but the point is whatever purpose they were taken for, and I am not suggesting to your Honor that they were taken for any nefarious purpose, but there were lots of pictures taken and to go out and select out the most unattractive pictures taken of what otherwise might have been some benign purpose years ago, does not mean it goes to admissibility.

gtjb

They were selected for the lawsuit.

If you look just at the mosaic over there to my left, I don't know what exhibit it is, but the distinctions in color in the black and white photograph are such -- and I'm no photographer -- I suggest that the film and technique used at that time -- maybe not intentionally so, but had the consequence of having very little distinctiveness, very little distinction. And what appears to me if you look at it from the distance I am, about 20 feet, it looks to me as though it could have been taken over the Sahara.

And I can say to your Honor I have seen aerial photographs of the Albuquerque area taken by perfectly reputable, honorable and talented photographers which look completely and totally different than that, and that, I think, goes to admissibility.

THE COURT: Not if the witness says it fairly represents.

MR. ARKIN: But how can that witness who did not take that picture and did not fly at 11,000 feet and so forth say that?

THE COURT: I gather he flew at five.

This was an 11,000 foot -- the thing that bothered me yesterday is, how can the witness, who says he flies at

gtjb

5,000 feet, say that accurately reflects the area if the picture was taken at 20,000 feet? This is what bothers me.

MR. ARKIN: Yes, your Honor.

THE COURT: Because all he can say is what it looked to him at 5,000 feet.

MR. ARKIN: Again, your Honor, the very point, if I might interject --

THE COURT: There is an awful difference in looking at something at 20,000 feet and looking at something at 5,000 feet.

MR. ARKIN: I am going to say one more thing and then sit down.

What Mr. Devorkin has been saying throughout his entire dissertation a moment ago had to do with distance, distance.

Distance is a function of maps, not necessarily photographs.

I cannot quarrel with one inch equals 1,920 feet. I can quarrel with what all this particular piece of work looks like, texture, feel, color, distance, contrast and so forth.

Distance is not enough, in my mind, I very strongly suggest should not be enough in anybody's mind, to cross the threshhold of admissibility.

THE COURT: Mr. Fleming?

MR. FLEMING: Yes, your Honor.

Very briefly, with regard to what I understand are Rainbow Lake pictures, I understood Mr. Devorkin to say last night that the picture amounts to a mosaic of different photographs taken at different times at different heights, and I don't see how you can have a mosaic which fairly represents anything if it is made up of photographs taken at different times from different heights at Rainbow Lakes.

On Albuquerque, we have some Jencks material that indicated that photographs were taken for purposes of this trial, so I don't know if these are the photographs we are talking about or that film is some other evidence they intend to offer.

Putting that aside, Mr. Devorkin just said that there were two ways to do this, and this does bother me in this case. This has not been an inexpensive case for the U.S. Government. Mr. Devorkin says there are two ways to do it.

The best way is for an airplane to make a continuous run making a series of photographs and putting every one of those photographs down and making a mosaic.

gtjb

The government did not choose that route apparently. I suppose they will say it was too expensive, which is a little mind boggling to me. He says instead they took a second route, which is to take alternate photographs and lay them down.

If you take alternate photographs -- I don't know anything about photography, but it seems to me if you take alternate photographs and lay them down and make a mosaic out of them and put that on to represent distance, there has got to be stretching, which is not representative. There has just got to be.

So I say two things with regard to that:

With regard to Rainbow Lakes --

THE COURT: Let's forget Rainbow Lakes, let's just stay on Albuquerque.

Mr. Devorkin, what is the purpose of offering these maps?

MR. DEVORKIN: To show where in relationship to each other developed areas of Albuquerque and Rio Rancho are over towards.

THE COURT: Couldn't that be done on a map?

MR. DEVORKIN: I don't think so, your Honor. I think looking at the mosaic, your Honor, will show you that, your Honor.

gtjb

We did not select --

THE COURT: Why can't it be done on a map?

MR. DEVORKIN: Because the map does not show the development as it shows on --

THE COURT: So you are offering it for more than just distance, you are offering it to have the jury look at it and say, "This is what it looks like."

MR. DEVORKIN: But not -- your Honor, I agree to -- I agree, but with this qualification:

I am not offering it to show the jury what a house or a street looks like from a given altitude, I am offering it to show -- and I think they very clearly show this to the sufficient degree of accuracy to be probative to the court and the jury -- that there are houses in this area. You can't see the front door of the house necessarily --

THE COURT: I am not asking that.

I am asking, what are you offering it for?

Wait a second. I don't need three assistants getting up. Ms. Hynes is making remarks which the reporter, I'm sure, is getting, Mr. Devorkin is talking, you are on your feet, Mr. Kaufman. Let's have an orderly procedure here.

I assume Mr. Devorkin is the man who knows all about this. He is responsible for this. I will not listen to anybody else from the government.

You are on your feet, Devorkin is on his feet and Ms. Hynes is whispering in loud terms what she says answers should be. I am not going to take that. You are supposed to be responsible lawyers and know how to conduct yourselves.

Now, you told me when you originally offered this that it was to show relations of space.

MR. DEVORKIN: Yes.

THE COURT: Now, obviously photographs show more than that and make a greater imprint on a viewer's mind than just relationship of space, doesn't it? Therefore, you have a very heavy burden here.

Now you tell me what else you are offering it for.

MR. DEVORKIN: Can I turn one of them around, your Honor, and show you?

THE COURT: Yes, sure.

(Pause.)

MR. ARKIN: Your Honor, may I read one thing to you from a letter --

THE COURT: No.

MR. DEVORKIN: Your Honor, the mosaic in the center is 1959. We took as much of the photographs as existed over the Albuquerque area for 1959.

I am going to speak to one thing Mr. Fleming said.

THE COURT: No. Don't let your mind get interrupted. Answer my question.

MR. DEVORKIN: All right.

This is 1959. This shows the extent, for example, in the lower right-hand portion of -- this is the north-east section of Albuquerque -- of how far up in the north-east section the homes and developments had reached and how much vacant land there is. You don't see that on a street map or a map like that. That's not in there.

The same thing over by the river, it shows the extent of the development over at the river, how far up it has reached.

It shows where certain airports are and so forth and so on, certain physical features on the map.

This is 1967 --

(Continued on next page.)

EOjw 1

THE COURT: Stay there, where is Rio Rancho?

MR. DEVORKIN: Rio Rancho would be here but it wasn't in existence at the time. That is why that date was chosen.

THE COURT: All right.

MR. DEVORKIN: This is 1967 (indicating). Let me just raise it up.

This particular point can be picked out to show where in 1967 this northeast point is.

Here is the northeast section, your Honor, and the jury will be able to see to what point the development has reached in 1967 in the northeast section, how far it has gone. They can compare the two.

A witness knowing Albuquerque can pick out -- will pick out a particular point and they will say in '59 there is no growth beyond that point. In 1967 the growth has been beyond that point to this extent.

This is Rio Rancho starting where Mr. Kaufman is pointing, this is before Rio rancho expanded.

Your Honor can see it shows the roads that were plotted out and it shows the beginning quite clearly of the developed section of Rio Rancho, the entrance area to Rio Rancho. It is very visible, there is no distortion at all.

ojw 2

It shows that in relation to other areas of Albuquerque, other developments. This is Paradise Hills here. This is other parts of the west side.

This is the river. There is a new airport up here that wasn't there in '59 on the east side of the river and there are other developments, shopping center areas that people familiar with Albuquerque will point out to the Court and the jury. They were not there in '59.

The next photograph, mosaic, I wanted to be very careful about this, this is the mosaic itself, 1975 mosaic.

It is at a smaller scale than the others, but the scale will be clearly identified as to what distance equals how many feet.

Likewise on this map, which to make it easier for the jury and the Court, we have had blown up. The witness will testify how he blew it up to make this map here (indicating).

The contrast you will see is a little bit sharper in this blowup and it is easier to look at.

The blowup, which is one inch equals a mile on this mosaic, again shows the entire Albuquerque area, practically all of Rio Rancho including the new -- or all

ojw 3

of the -- included the new expanded portions. To what extent the roads have been graded and to what extent they haven't. To what extent the developed area has expanded or it hasn't.

Witnesses will testify about what other developments in Albuquerque are represented on this mosaic. How far they have gone and in what direction they are in. How large they are.

The jury can clearly see where they are in relation to Albuquerque. Any particular point in Albuquerque into Rio Rancho.

The maps don't show this kind of information. They have streets usually. They have nothing else but streets. That is why photographs were used. That is what we are offering them for. We are not offering it to show what this particular object there looks like from that height. We are offering it to show where these objects are in relation to other aspects of Albuquerque and to Rio Rancho.

We think for that purpose it is extremely accurate.

THE COURT: Mr. Arkin.

MR. ARKIN: Let me quote to you from a letter dated August 27, 1976 addressed to Ms. Hynes from

Mr. Mitchell, apparently who is an officer of some corporation utilized by the prosecution to make these mosaics.

The mosaics are to be prepared, one each, from photographs dated 1959, 1967 and 1975. They will be prepared by cutting and trimming the individual nine by nine prints and mosaicing them together on the basis of "best fit".

No scale ratioing or rectification will be accomplished.

Now, I am not entirely familiar with the technical terms, no scale and et cetera, but it strikes me that they must certainly mean there is some dimunition of accuracy.

What I am concerned about is that again what Mr. Devorkin seeks to show here really are things which can be shown by other means, to wit, measurement, that is, maps, that is square footage, square acreage, but utilizing what will be presented to the jury by Mr. Devorkin as photographs taken at varying heights and at varying times --

THE COURT: Wait a second, that is the point I raised. You haven't pointed out to me that Mr. Devorkin is wrong that they are the same height at the same time.

oj15

MR. ARKIN: I don't know that.

THE COURT: He said so.

MR. DEVORKIN: I said, your Honor --

THE COURT: That all the pictures used to make the first mosaic were taken at the same height.

MR. DEVORKIN: That is correct, your Honor.

MR. ARKIN: Ms. Dacey --

MS. DACEY: The most recent mosaic, they have not --

THE COURT: Wait a second, we are doing number one first. Number one he says all of the photographs taken from geodedic survey, an official body, were taken at the same height and therefore you are placing them together as though they had been taken as one picture at the same time.

MR. ARKIN: I will address myself to the first one, the 1959 mosaic, is that correct, Mr. Devorkin?

MR. DEVORKIN: That is correct.

MR. ARKIN: 1959. I have no knowledge that they were taken at the same height. I was told by Ms. Dacey that at least one of them was taken at varying heights.

THE COURT: Which one?

MR. ARKIN: The third one.

THE COURT: We are not worried about the third one. We are talking about the first one.

MR. ARKIN: I wanted to clear up to the Court what I said before.

In respect to the first one, my objection to that would be that without having the photographer present in order to testify as to the conditions under which he took the photograph that the prejudice flowing from that kind of a photograph is substantial enough where if you balance it out without me having an opportunity to question him as to weather conditions and the way he took the pictures, that the impact of that on the jury considering what it is being used for by the prosecution, which is to prove merely distances, should outweigh --

THE COURT: I gather he is offering it -- the first one you didn't exist, Rio Rancho didn't exist on the first one.

MR. ARKIN: Yes, sir, that is right.

THE COURT: All you had was vacant territory.

If you look at it you are telling me Albuquerque itself looks terrible. That might be true.

MR. ARKIN: Yes, sir, it does. Not if you are there, but from here it does.

THE COURT: The first one is a representation

ojw 7

of what it looked like in '59 with Mr. Devorkin's representation -- ask him where he got it from.

MR. ARKIN: I understand he got it from the United States geodedic survey.

MR. DEVORKIN: United States geological survey and I can, if your Honor wants me, respond to the points Mr. Arkin was raising.

THE COURT: I am worried about the altitude. You made a representation that they were all taken from the same altitude.

MR. FLEMING: This is '59.

THE COURT: '59, I am asking you where you got the information from.

MR. DEVORKIN: The United States geological survey.

THE COURT: From whom and how so Mr. Arkin can make up his mind whether he wants you to bring somebody in. After all, Perlmutter is going to be on all day today, I am sure.

MR. ARKIN: I have a couple of questions, your Honor.

MR. DEVORKIN: I got it from a Mr. Booker and a Mr. Wagner who work in essence as custodians of these kinds of records for the Geological Survey.

Their records show that the photographs were taken at such and such a height. The certificates on the photographs give the dates the photograph was actually taken.

THE COURT: He says he can produce the custodian of the records to testify that all of the pictures taken that comprise the 1959 mosaic were taken from the same height.

He is also going to tell you what the camera was like. All right.

MR. SPRIZZO: Were they all taken at the same time, your Honor? It seems like a threshold requirement for admissibility is someone who took the pictures -- as I understand the Rules of Evidence unless someone can testify that it was a fair and accurate representation at the time it was taken, number one, or if you call the photographer who took them so testified.

THE COURT: If they come out of the official files --

MR. SPRIZZO: My question is if you have a bunch of individual photographs taken at different times and different days and all put together, you have distortion.

THE COURT: They were taken on the same day, were they not?

ojw 9

MR. DEVORKIN: Your Honor, the certified copies of the photographs show -- this is for the 1959 mosaic.

THE COURT: Yes.

MR. DEVORKIN: Holding up eight sets of a number of photographs, they were all taken on November 6, 1959.

THE COURT: The same day.

MR. DEVORKIN: Excuse me, your Honor, one set of about seven photographs was taken on October 26, 1959.

MR. LAVINSKY: You have combined two days on the one montage.

MR. DEVORKIN: The point, your Honor, is if Mr. Lavinsky or Mr. Arkin, we don't think there is any difference for the purpose they are being offered --

THE COURT: The purpose they are being offered for is to influence this jury, Mr. Devorkin. You are not going to tell the jury I am offering it just for this limited purpose. They don't believe you. They are looking at a picture and they see a picture and they are impressed by what they see.

Therefore, I must take that into consideration on ruling whether it is admissible.

MR. DEVORKIN: I understand.

THE COURT: You say they were on separate days. How do you justify they are even on separate days because you may on separate days have different weather conditions which highlight or depress light so that you have a different view.

MR. DEVORKIN: First of all, Mr. Woodward can testify as to the obstructions in the air that the photographs show. He is qualified to do that.

Second of all, as I understand it, when you are taking aerial photography of an area to make a highly accurate map you cannot always take the whole area on the same day. There is a physical limitation. When they make the map up --

THE COURT: That doesn't argue for admissibility, Mr. Devorkin. The mere fact that you cannot do it doesn't make it admissible because it was done some other time, does it?

MR. DEVORKIN: I am saying it is still accurate, your Honor, that is all I am saying.

THE COURT: I am not worried so much about the first one. I think we ought to get to two. That is where Rio Rancho first appears.

MR. ARKIN: Let's go to two and leave this

ojw 11

one on the shelf for a while.

THE COURT: Yes.

MR. ARKIN: Okay.

MR. FLEMING: May I ask a question, Judge?

THE COURT: On one. When I say one, I mean the 1959

MR. FLEMING: Is one the same scale as two?

THE COURT: That was the next question.

MR. FLEMING: I am sorry, Judge.

THE COURT: Two, the 1965 --

MR. KAUFMAN: '67.

MR. DEVORKIN: The scales are not printed on the mosaics. They will be as Mr. Woodward is calculating the scales.

THE COURT: The question is are they the same scale?

MR. DEVORKIN: No, they are not. The 1967 photographs I believe are slightly smaller scale. We will put the accurate scale on the photograph.

THE COURT: Mr. Devorkin, nobody is worrying about your putting it on or not putting it on.

The issue is are they the same scale and you say no, they are not. What is the difference in the scale?

d t

MR. DEVORKIN: May I just have a moment, your Honor, to look at my figures?

THE COURT: Sure.

MR. DEVORKIN: I belive, not having Mr. Woodward's qualifications, but I believe that the scale for '67 would be about a little less than 50 per cent smaller.

THE COURT: What does that mean, 50 per cent smaller?

MR. DEVORKIN: For example, let me give this hypothetical. If one inch on the 1959 mosaic equals 20,000 feet, it doesn't, but if it equaled 20,000 feet, I believe one inch on the 1967 mosaic would equal 26,000 feet.

THE COURT: That means you are further away and the object is smaller.

MR. DEVORKIN: That's correct.

MR. FLEMING: Your Honor, the purpose of this is to offer a comparison of size.

THE COURT: That's what he says.

MR. FLEMING: To my mind that's inconceivable unless the scales are the same with regard to all three photographs.

MR. DEVORKIN: It is not inconceivable because it is showing the relative movement of direction and develop-

eojb 2

ment.

THE COURT: Relative movement has to be related to a constant and the constant is the same scale, is it not?

MR. DEVORKIN: A witness -- there will be witnesses who will pick out a fixed point on the mosaic. That's the corner of whatever and in relation to that fixed point the witness will say there has been this development pointing it out so far beyond that in this year from 1959 to 1967. The witness will be able to do that from a fixed point.

The jury will be able to know what the distance really is for themselves because they will have a statement of what the scale is.

MR. ARKIN: Statements as to scale aren't very helpful to the jury.

THE COURT: What other question did you want to ask about the 1967 map, Mr. Arkin? They have established the scales are different.

MR. FLEMING: Altitude.

MR. ARKIN: Altitude, weather conditions.

THE COURT: What about the altitude between the 1959 and '67?

MR. DEVORKIN: I believe that's the reason, your

Honor, the scale is different. The altitude in 1959 is 9700 feet.

The altitude in 1967 is 13,000 feet.

THE COURT: Yes. Now let's go to the 1975 one.

MR. DEVORKIN: 1975 is at a smaller scale. The original mosaic, which is here and Mr. Woodward has blown it up --

THE COURT: So that what?

MR. DEVORKIN: I am sorry.

THE COURT: That 1975 original one leaves me absolutely cold. I can't see how anybody can see anything on it.

MR. DEVORKIN: Mr. Woodward blew this mosaic, '75 mosaic up, to a larger size so that one inch equals a mile on this.

THE COURT: How does that relate to the '67 one?

If one inch equals a mile, what does an inch equal on the '67 one?

MR. DEVORKIN: I don't have that figure right now. Mr. Woodward is in the process of calculating it.

MR. ARKIN: I have another question, your Honor.

THE COURT: I will rule out the 1975 original mosaic. To me it is absolutely unclear and I don't see how anybody could testify from it and that any jury could draw any conclusions from it.

I have 20/20 vision with these glasses.

MR. DEVORKIN: We think that the blow-up is --

THE COURT: The problem in there is how does that relate picture-wise so that a jury when it is asked to compare the 1975 photograph against the 1967 photograph can make a rational determination?

MR. ARKIN: There is one other point, your Honor. These mosaics I think on their face, though I have only flown over Albuquerque a few times, they don't really look as if they cover the same area. That is to say, if you are going to have a comparative sequence of photographs of any kind, it seems to me the photographs should purport to cover the same area.

THE COURT: I don't think it makes any difference as long as the perimeters we are interested in are the same. Their excess to it makes no difference.

MR. ARKIN: One of the claimed issues in this case is the barriers surrounding Albuquerque and one of the barriers surrounding Albuquerque are the Siandia Mountains and if you look at the various mosaics or photos, the Siandia Mountains are not represented similarly in each of the three photographs.

eojb 5

The barriers which we claim, which we claim surround Albuquerque, appear to be looming as some kind of issue in the case and --

THE COURT: What doyou mean some kind?

MR. ARKIN: Issue.

THE COURT: I think it is the number one issue. The government's proof so far, the thrust, the guts of the government's case is the misrepresentation that Albuquerque is hemmed in on three sides and the only way you can grow is through Rio Rancho.

MR. ARKIN: I confess it is an issue.

THE COURT: That's numero uno as far as proof is concerned.

MR. ARKIN: All right, your Honor. Pardon my guess.

THE COURT: That was a guess?

MR. ARKIN: I got the guess off my chest.

The point is that the Siandia Mountains are one of the barriers which contain Albuquerque and if you are going to have people, as Mr. Devorkin suggested this morning, like the man who is head of the council of government, I think he said, and others who will come in and be given these mosaics to testify in respect to, it seems to me that any mosaic which is shown, if any ever be shown, certainly should have the natural barrier of the Siandia Mountains in a similar respect, that is to say that you shouldn't have it cut out in one picture and appearing slightly in another and appearing more in another picture because those mountains are one of the barriers which the company has maintained do restrict the growth of Albuquerque.

So they become an important part of any presentation particularly as Mr. Devorkin said this morning, these are going to be used I think for the man from the council of governments, they will be used not just to show the jury they were taken, they will be used apparently as blackboard exhibits for a witness to testify in respect to.

THE COURT: I would assume as far as -- I gather the Siandia Mountains are on the right-hand side of the photograph as you look at it.

MR. ARKIN: Yes, sir.

THE COURT: I gather -- the jury is going to look at that and see how much distance there is to the Siandia Mountains.

MR. DEVORKIN: That's correct.

THE COURT: They must be offered for that purpose.

MR. ARKIN: For example, in the third photograph, the one Mr. Kaufman has his fingers on right now, as much as you do --

MR. DEVORKIN: You have the most. This is the whole mountain range on the other side of it.

MR. KAUFMAN: Here is the tramway.

MR. ARKIN: The mosaics in any respects should have that barrier among others.

THE COURT: He says you have more of the Siandia Mountains on the 1975 photograph than you have on any of them.

MR. FLEMING: You can barely see it.

MR. KAUFMAN: So long as you have the beginning of the mountains on the photograph you can see where the development is in relation to the mountains.

THE COURT: I gather the argument is going to be made, if you look at Albuquerque as it is portrayed on the 1975 blow-up you have as much room vacant between the northeast portion of Albuquerque and the Siandia Mountains as the city now takes up. Looking at it that looks like what they are most likely going to try to argue.

MR. FLEMING: I hope they do.

MR. ARKIN: The two problems with the photographs. One can be handled by testimony which is a lot of what appears to be vacant land there may indeed be and is grant land.

eojb

THE COURT: That is your burden.

MR. ARKIN: I understand that.

Secondly, this kind of a picture if such argument were to be made does not demonstrate which of that land because of its altitude is buildable or not. You are in a fairly mountainous region there and obviously a lot of that land can never be developed in any way.

Let me finish, please.

MR. KAUFMAN: I am sorry.

MR. ARKIN: If you utilize a map such as this, a photograph such as this, I think it is somewhat deceptive insofar as a jury. Particularly when there are, I don't want to suggest to the prosecution how to try their case, but there are better ways of showing what they seek to show if it can be shown.

THE COURT: If you don't want to try their case, maybe you ought to stop.

MR. ARKIN: I don't want to try their case.

THE COURT: You are trying to keep this out for your case, not to help them out.

MR. ARKIN: I am not trying to help them out, your Honor.

MR. FLEMING: But they could have done better, Judge.

MR. DEVORKIN: I don't think that's true, your Honor. I think the testimony will show --

THE COURT: I am interested in the factual material that goes to admissibility. The question is what you have to use on cross examination.

MR. FLEMING: If we don't have the people here to cross examine we can't cross examine the weight of the evidence.

The distortion on this I wager is so extraordinary, for example, it shows all the mountain range, as Mr. Kaufman said, Rio Rancho -- that the growth of Rio Rancho is greviously distorted and I think that's an important fact. You can't ask this jury to look at spots and say you have to make this one ten times bigger in your mind than this one.

THE COURT: You don't have to because the representation by the government is that each picture was taken from the same altitude on the same day.

MR. LAVINSKY: Were they?

MR. ARKIN: Not those.

MR. DEVORKIN: I want to be careful, your Honor. The pictures in any given mosaic are taken within two weeks of each other.

THE COURT: You mean that the 1975 original was taken within a two-week period?

MR. DEVORKIN: I believe that's correct, your Honor.

MR. SPRIZZO: I don't think the threshhold requirements of admissibility have been met.

MR. DEVORKIN: Absolutely within a week of each other. They take a strip --

MR. FLEMING: The scale is my point.

MR. DEVORKIN: The scales are the same.

MR. FLEMING: I mean between three and two There is an enormous difference.

THE COURT: I think you had better get more information about that and let's put Perlmutter on and continue the day's work.

You can't have a comparison between different photographs. They must be the same photographs.

Otherwise you are asking a jury to use its mind in blowing one up or reducing another.

Comparison, when you start with the simple one, you take a statistical form and compare 1975 with 1967, that's easy.

If you want to compare a visual aid such as a photograph, which has such a tremendous impact on the mind when you see it through your eye, seems to me they have got to be equal for comparison purposes.

MR. DEVORKIN: Your Honor --

THE COURT: That's what you are offering it for. You are trying to show this jury through this photograph that a certain amount of space exists for development on the northeast or in the other areas of Albuquerque and you also want to show them how little, as you claim, was done by Rio Rancho in developing.

MR. DEVORKIN: That's right, your Honor.

THE COURT: That's what you want to show.

MR. DEVORKIN: That's right.

THE COURT: If you want to do that, it seems to me you have to have the same photographs and the same photographs from mainly altitude or distance or ratio, I don't know, the experts will have to tell us that, but if the scales are different, obviously the eye must see it differently.

(Continued on next page.)

T3A.AM

gtjb

MR. SPRIZZO: Judge, that is the part that bugs me, too.

MR. DEVORKIN: I agree with two things, I would say.

One, as they exist now with testimony and clear placement on the --

THE COURT: I have no problems, for example, with a witness saying on 1975, for example, "This fairly represents Albuquerque from X feet, whatever it is, period."

If he says that based on the photographs which have come from the geological survey and has the stamp of authenticity about it with the dates upon which it was shown, I think you could get it in simply for that purpose.

But when you start to say, "And, members of the jury, you can consider this in relation to a photograph taken in 1969 with an entirely different scale," then I have problems with it.

MR. DEVORKIN: Your Honor, two things:

First of all, the witness who made the mosaic will put on the mosaics themselves a very readable and usual scale so anybody looking at that particular mosaic --

THE COURT: You miss my point, Mr. Devorkin.

No matter how much he tells us about the differences, the person looking at it has an impact, and the

gtjb

impact is not a comparison. There is an adjustment being made without the picture being adjusted.

MR. DEVORKIN: There is a second thing we can try to do.

I can ask Mr. Woodward to take the mosaics and as much as possible -- there are some limitations because you will have such a big result -- adjust them by blowing up or reducing the mosaic to the same scale.

THE COURT: If they can be increased or reduced so that they are actually comparable, that is something else. But this is your problem.

Let's get Mr. Perlmutter on and bring the jury in. It is 11:00.

(The jury entered the courtroom.)

XXX LAWRENCE PERLMUTTER, resumed.

THE COURT: You may proceed.

XXX DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, did you have responsibility for distributing promotional material?

A Yes, I did.

Q Can you tell us now that was done?

A A system was set up where all promotional material that was prepared, several copies of it were sent down to me by the advertising department, and what I would do is make up a distribution, small distribution list to each office and then each office would reorder it as they needed it.

Q I show you Government Exhibit 379 in evidence (handing).

By looking at that pamphlet, can you tell us when that was used?

A May I use my notes?

(Pause.)

A That was used prior to July of 1972.

Q Was it used up to July of 1972?

A Yes.

THE COURT: From when, do you know?

THE WITNESS: No, I don't.

Q Do you maintain records on distribution of promotional material?

A Yes, I do.

Q When do those records begin?

A Toward the middle or the end of 1971.

Q So from toward the middle or the end of 1971, was this Government Exhibit 371 being used as far as you know?

A Yes, sir.

THE COURT: 379, isn't it?

MS. HYNES: 379. Thank you, your Honor.

THE WITNESS: What was the number?

THE COURT: 379, the one Ms. Hynes just showed you.

THE WITNESS: Yes. That was used at least from the time that I started the distribution sometime in July of 1972, or until -- until July of 1972.

Q I show you Government Exhibit 833 for identification (handing).

Can you recognize that?

A Yes, I can.

Q Is that a memo from you?

A Yes, it is.

MS. HYNES: I offer it.

Your Honor, with respect to 833, I will only offer the second page, the portion that relates to Rio Rancho, and the top line.

MR. ARKIN: No objection.

XXX (Government Exhibit No. 833 marked for identification received in evidence.)

THE COURT: What are you offering, just the top page?

MS. HYNES: I am offering on the second page the top line, which states what it is.

THE COURT: That's all?

MS. HYNES: And the piece on Rio Rancho.

THE COURT: All right.

MS. HYNES: So the record is clear, I am offering on Exhibit 833, the covering memo and on the second page it says, "literature to be discontinued," and under B, Rio Rancho, and there were seven items of literature that were discontinued as of October 25, 1973.

Q Mr. Perlmutter, showing you Government Exhibit 271 in evidence, the top notation which states "obtain HUD property report," et cetera, when was that placed on Government Exhibit 271, if you know?

A The latter part of 1973, when the HUD regulations came into existence.

Q Mr. Perlmutter, to your knowledge, did Chester Carity's approval have to be obtained prior to releasing any piece of promotional material?

A On major pieces of promotional material he would review them, yes.

Q What are you talking about, major pieces?

A The booklet that you just showed me recently.

Q Are you referring to Government Exhibit 379?

A Yes, he would review that.

Q What about the booklet "This is My Land"?

A Yes, that would be considered a major piece.

Q Are there any other items that would be considered major pieces?

THE COURT: When you say "This is My Land," what is the exhibit number?

MS. HYNES: 388 and 389.

A Repeat the question, please.

Q Were there any other major pieces that you can think of that would require his approval?

A Not that I can recall offhand, no.

Q Do you know how many houses there are at Rainbow Lakes Estates, approximately?

A Well, to the best of my knowledge, I believe it's somewhere around 570 houses there.

Q With respect to an exchange into a building area at Rio Rancho, if there is an exchange into the Corrales Heights area, was a commission paid to a salesman on an exchange into Corrales Heights?

MR. ARKIN: May we have a date on that, if your Honor please?

THE COURT: Yes.

MS. HYNES: On this last question?

MR. ARKIN: Yes.

Q Was a commission paid at any time during your employment to salesmen?

A To an off-site salesman, yes.

Q At any time during the course of your employment, was a commission paid to a salesman for an exchange into what was called an exchange area?

A I don't believe so.

Q During the period of time that you have been employed by the company, has there been a resale market in Albuquerque for Rio Rancho lots?

A No.

MR. ARKIN: Objection.

THE COURT: I don't know what you mean by a resale market.

Q Has there been a market for resale of lots in Albuquerque, Rio Rancho lots, during the period that you have been employed by the company?

MR. FLEMING: I object, your Honor.

THE COURT: Ask him fundamental questions, Ms. Hynes, in which that conclusion can be drawn.

That is a conclusory statement and it has so many complications to it I will sustain the objection.

Q Mr. Perlmutter, you testified that from time to time the company would receive inquiries on resale, is that correct?

A Yes, ma'am.

Q What would be done with these customers' inquiries on resale?

A As I stated earlier, if they came to the New York office, it would be forwarded to either the local office or to Albuquerque administration office for handling.

Q If they were forwarded to the administrative office in Albuquerque for handling, what was done with them?

A The customer would be written a letter and inserted a paragraph that had been prepared which states that AMREP is not in the resale market; we don't resell property for people.

Q Was any suggestion made to the customers as to how they could go about reselling their property?

A They were -- in one period of time, I don't remember exactly what the period was, but they were told either to contact a local broker or contact a broker in their area or to contact their friends or so forth.

Q When you say contact a local broker, what are you referring to?

A A real estate broker in Albuquerque.

Q And was that a paragraph in a form letter?

A Yes, ma'am.

Q And was there a particular local broker that they were referred to?

A I don't recall any.

Q Was there a local market in Albuquerque for the resale of lots at Rio Rancho at the time that that advice was given to customers?

A Not to the best of my knowledge.

Q Did you ever buy any land at Rio Rancho?

A No, I did not.

MS. HYNES: I have no further questions.

(Continued on next page.)

THE COURT: You may cross examine.

CROSS EXAMINATION

XXXX BY MR. ARKIN:

Q Mr. Perlmutter, keep your voice up.

Do you know what an NYA number is?

A Yes, I do.

Q What is it?

A An NYA number is an approval number given by New York State for literature or any advertising to be put on prior to it being used.

Q What agency of New York State?

MS. HYNES: Your Honor, I object. This is beyond the scope of direct.

THE COURT: Overruled.

MS. HYNES: And there has been no foundation laid with this witness.

I have no objection if there is a foundation.

THE COURT: Overruled.

Q I will reask my question.

A The real estate division.

Q New York Department of State, sir?

A Yes, sir.

Q Is it not company policy to submit all advertising to the New York State Department of State for review and approval prior to use?

A Absolutely.

Q And if it is approved, then the advertising bears an NYA number, doesn't it?

MS. HYNES: I object.

THE COURT: Pardon me?

MS. HYNES: I object to the use of the word "approval" unless this witness can testify on first-hand knowledge.

THE COURT: You brought out on direct examination that this man is in charge of distribution and getting things together and getting it in shape.

The objection is overruled.

Q My last question --

A Would you please repeat it?

Q Yes, I will.

Once the literature which is submitted to the New York State Department of State for review and approval is approved, it then bears an NYA number, does it not?

A Yes, sir.

Q On occasion, to your knowledge, is it not true that proposed advertising was submitted to the New York Department of State and the New York Department of State suggested certain revisions or changes and they were made by the company?

A Yes, sir.

Q And once the changes were made, the literature was approved?

A It was resubmitted for approval, yes, sir.

Q And it was used?

A And it was used.

Q You were just asked a moment ago as to whether Mr. Chester Carity had to approve certain literature before it was utilized, is that correct?

A Yes, sir.

Q Mr. Carity never approved any literature, did he, which was not approved by the New York Department of State?

A Absolutely not.

MR. ARKIN: Would you kindly mark this, Mr. Frezzo.

(Defendant Howard Friedman and Henry Hoffman Exhibit CS marked for identification)

Q Mr. Perlmutter, are you able to identify Exhibit CS for identification (handing)?

A Yes, I can.

Q What is it, sir?

A This is a bulletin that was sent to all managers by myself regarding promotional material and --

THE COURT: Let's not have the content.

Are you going to offer it in evidence?

MR. ARKIN: Yes. I am going to offer it in evidence.

Ms. Hynes?

(Handing)

MS. HYNES: Can we have a time period? Is there a date?

There is no date on this.

Q Mr. Perlmutter, do you have any recollection when it was that this particular bulletin was sent out, approximately?

A Approximately early 1972.

MS. HYNES: I have no objection.

(Defendants Howard Friedman and Henry Hoffman Exhibit CS received in evidence)

MR. ARKIN: Your Honor, may I read a couple of lines from it?

THE COURT: You may.

(Mr. Arkin read from Defendant Exhibit CS in evidence to the jury)

Q What are "all managers," Mr. Perlmutter?

A All managers are managers of offices, O&O

offices that sell Rio Rancho.

Q The agency which sell Rio Rancho land, is that correct?

A Yes, sir.

Q All the sales agencies?

A Yes, sir.

(Mr. Arkin continued reading from Defendant Exhibit CS in evidence to the jury)

Q By immediate termination, your bulletin meant to say that if you violated the company policy against using an approved advertising, that the man who did so would be terminated, is that correct?

MS. HYNES: Objection.

THE COURT: Overruled. This is cross examination.

MS. HYNES: It speaks for itself, your Honor.

A Yes, that's what it meant.

MR. ARKIN: May I have Prosecution Exhibit 256?

(Handing to Mr. Arkin)

Q Mr. Perlmutter, I show you Prosecution Exhibit 256 in evidence (handing).

Do you recognize this document?

A Yes, I do.

Q That is the confidential survey, isn't it?

A Yes, it is.

Q Do you know whether this was approved by the New York Department of State?

A Yes, it was.

Q After being submitted to it?

A Yes, sir.

Q Is that also true of Government Exhibit 271, the map (handing)?

A Yes, sir.

Q This was shown to the New York Department of State for review before it was approved and released and used?

A Yes, sir.

Q And "How to live, retire, invest in the sunny southwest," Exhibit 379, wasn't that also approved and reviewed by the New York Department of State?

A Yes, it was, sir.

MR. ARKIN: May we have 388 and 389.

THE COURT: I assume if these have an NYA number they have been approved. There is no point in going through them.

MR. ARKIN: Very well, your Honor, I will move on.

THE COURT: I think the jury understands that by now.

MS. HYNES: Your Honor, with respect to approval, I would --

THE COURT: Wait, wait, now, Ms. Hynes. We are involved in cross examination. Let Mr. Arkin continue.

I have merely stated there is no point in his going through any additional documents with NYA numbers on since the jury has now been told what this witness feels is meant by NYA number.

MS. HYNES: Your Honor has used approval.

THE COURT: Don't interrupt cross examination, Ms. Hynes.

Q Mr. Perlmutter, do you know if Government inspectors from the New York State Department of State have visited Rio Rancho?

A Yes, they did.

Q And they have done so over the years since its inception?

A Yes, sir, they have.

Q And there have been on-site inspections of Rio Rancho of all units of Rio Rancho in which land was sold in New York State?

A To the best of my knowledge, yes.

Q And the inspectors have inspected both the developed portion of Rio Rancho and the undeveloped portion of Rio Rancho, isn't that so?

A Yes, sir.

Q And these approvals by the New York Department of State of the advertising literature, the offering statements and so forth are based, in part,upon their on-site inspection, isn't that so?

A To the best of my knowledge, yes.

Q That also goes to the New York State offering statement, doesn't it?

A Yes, the New York offering statement had to be approved.

Q Will you tell his Honor and the ladies and gentlemen of the jury what the New York offering statement is?

A The New York offering statement is a complete document outlining what there is at the project and under what terms the land is sold, to the best of my knowledge.

Q And portions of the New York offering statement are required to be there by law, isn't that so?

MS. HYNES: Objection, your Honor.

THE COURT: You may answer that if you know.

A I don't understand the question, sir.

Q What is contained in the New York State offering statement is in part dictated by rule, regulation and law?

A Yes, sir.

Q You know that inspectors from New York State Department of State have visited the properties at least nine times, isn't that so?

A To the best of my --

MS. HYNES: Is this witness testifying on personal knowledge, your Honor? Can we establish whether there is hearsay here?

THE COURT: He is answering now. You interrupted the answer but he got out of his mouth before you interpreted "to the best of my" --

MS. HYNES: I am trying to determine whether he is basing it on personal knowledge or hearsay.

THE COURT: Wait for the answer and you will find out.

A To the best of my knowledge, yes, sir.

Q It is also a fact that other states where Rio Rancho land is sold, among the thirty-seven states, that those states also require advertising approval also?

A Most of them, yes.

Q For example, the AD number in Florida?

A Yes, sir, it has to be submitted.

Q And some of those states have also conducted on-site inspections of the property, have they not?

A Yes, sir.

Q Meaning they sent people out there to look and ask questions and scrutinize and so forth, isn't that right?

MS. HYNES: Objection.

A To the best of my knowledge, yes.

Q Do you know who Michael McGuigan is?

A Yes, I do.

Q Do you know that he was a fact verifier hired in 1972?

A Yes, sir.

Q By AMREP, you know that?

A Yes, sir.

Q You know that his full time occupation was to check the accuracy of all the facts represented in the company advertising?

A That is why he was hired, yes, sir.

Q In 1972?

A Yes, sir.

Q And that prior to that all the facts which appeared in advertising were checked by the company advertising department?

A Yes, sir, that was their responsibility.

Q Let's get on to tigers and pussycats.

Do you know whether the company has any particular policy -- let me strike that.

You testified yesterday that the company was seeking sharp and alert people with direct sales experience as salesmen for its product, is that not so?

A Yes, sir.

Q And by tigers I take it that what the company means were people who were sharp and alert, isn't that so?

A Were alert, yes, I would use.

Q By being a tiger, nothing was meant which was dishonest, was it?

A I wouldn't think so.

Q There is nothing about the term tiger in your mind which is dishonest?

A No.

Q The company had no policy discriminating against pussycats, did it?

A No, they didn't discriminate against pussycats.

THE COURT: The way in which the term was used, they didn't want to keep them on the payroll, though, did they?

THE WITNESS: A pussycat could have become a tiger according to what I have heard yesterday.

THE COURT: The brochure was read from which indicated by pussycat they meant a salesman who didn't sell?

THE WITNESS: That is right, sir, yes.

THE COURT: While you didn't discriminate against them, you didn't want them on the payroll.

THE WITNESS: No, we wouldn't want him.

Q If a pussycat could sell you would keep him on the payroll, right?

THE COURT: Come on, Mr. Arkin, it wasn't used in that way.

Q I take it, aside from sharp and alert people who were tigers, you also wanted people who were honest, decent and sincere, isn't that so?

A I think tigers were sincere, honest also.

Q You know that all salesmen who sell Rio Rancho land must be licensed, isn't that so?

A Yes, sir.

Q Do you know what they have to do in order to be licensed?

A Yes, sir, I do.

Q What do they have to do to be licensed?

A In order to become a licensed salesman they receive a booklet from New York State which they have to study and they are given an exam.

Q Are you able to identify the booklet from New York State which they have to study before they take the exam referring to prospective salesmen?

A I can identify the booklet. I don't know whether there are any changes in the years, you know. maybe of a little content, but I can basically identify a booklet, yes.

MR. ARKIN: Would you mark this, Mr. Frezzo.

(Defendant Howard Friedman and Henry Hoffman Exhibit CT marked for identification)

Q Showing you CT for identification, are you able to recognize this particular pamphlet?

A Yes, I am.

Q What is it?

A It's the real estate salesman's booklet that is sent to the salesman to study and learn and know so he can pass an exam to become a licensed salesman.

Q Does the company see to it that each prospective salesman gets a book like this?

A It comes from New York State.

Q What particular date is this booklet?

A May of 1974.

MR. ARKIN: We offer it.

MS. HYNES: May I have a voir dire, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MS. HYNES:

Q Do you have any responsibilities in connection with licensing salesmen?

A No.

Q Do you have any connection in distributing a pamphlet like this?

A No.

Q When for the first time did you see this pamphlet?

A This particular pamphlet?

Q Yes, the one Mr. Arkin just showed to you.

THE COURT: Or a similar one because that is what his testimony is.

Q Or one that is dated May of 1974.

A A few days ago.

Q A few days ago. Who showed it to you?

A I had gotten it in my office.

Q Who showed it to you?

A Who showed it to me, a manager showed it to me originally. That is where I got it, from him.

Q What were the circumstances of your being shown this a few days ago?

A I was asked to get a copy for Mr. Arisohn.

Q Is he associated with Mr. Arkin?

A Yes, he is.

Q Was that the first time you had seen this pamphlet?

A This one, yes, ma'am.

Q Do you know of your own personal knowledge whether this pamphlet was ever given to any salesman?

A No, I do not.

Q Do you know of your own personal knowledge whether this pamphlet was ever used by any salesman?

A It had to be used --

Q That is not my question, Mr. Perlmutter.

Do you know of your own personal knowledge whether this pamphlet was ever used by a salesman?

A That specific one, no.

Q Other than a few days ago when this was given to you for Mr. Arisohn you hadn't seen it?

A No, ma'am.

MS. HYNES: I object to it.

BY MR. ARKIN:

Q You know that pamphlets just like this were used by salesmen to study for their exams.

A Yes.

Q This particular book with my fingerprints, you don't know whether this particular book was right, is that right?

A That is right.

MS. HYNES: I have more questions.

BY MS. HYNES:

Q You just said --

THE COURT: Wait a second, let's get something straight.

This is being offered as a sample that existed over the years not as the specific one. That is the way it was offered, Ms. Hynes. Now you may examine on the voir dire.

BY MS. HYNES:

Q Mr. Perlmutter, in answer to my previous questions I asked you whether you knew if any salesman actually used this or a pamphlet like this and you said no, is that correct?

A You asked me if they had used that particular one.

Q Do you of your own personal knowledge know if any salesman used a pamphlet like this?

A Yes, I do.

Q One that was prior to May of 1974?

A Prior to May of '74?

Q You said you don't have personal knowledge --

THE COURT: Let him answer a question. He is in the middle of it, Ms. Hynes, of answering you.

A Yes, I know that salesmen studied from that particular booklet.

Q How do you know that?

A They have told me over the years salesmen that they are studying for an exam.

Q With respect to this May of 1974 --

THE COURT: That's right, it is not May of '74.

MS. HYNES: This is revised May of 1974.

THE COURT: Ms. Hynes, it was offered as an example of the type of book. Mr. Arkin specifically said before he offered it or at least the witness indicated there were internal changes made in it, but that represented the type of book that was used by the salesmen. That's what it was offered for, Ms. Hynes, not an issue of 1974.

MS. HYNES: I object for the type of book.

THE COURT: Overruled.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CT received in evidence.)

MR. ARKIN: If your Honor please, I would just like to read the table of contents of this exhibit.

THE COURT: We have had one of those before this jury before.

MR. ARKIN: I believe your Honor did not permit it into evidence last time.

THE COURT: Didn't you read to the jury the table of contents of that before?

MR. ARKIN: I don't believe so, your Honor.

THE COURT: All right.

(Mr. Arkin read from Defendants' Exhibit CT in evidence to the jury.)

BY MR. ARKIN:

Q With respect to brokers, must they also take an exam before they are qualified?

A Yes, sir.

Q In every sales office that AMREP had, it had to have a broker?

A Yes, sir.

Q A licensed broker?

A Yes, sir.

Q In New York State, do you know what the qualifications are for a broker?

A Yes, to receive information to study for the exam and take an exam.

Q All salesmen were supervised by a broker, weren't they?

A Yes, they were.

Q Are you able to identify the booklet, if any, which individuals utilized to study for the broker's exam?

A I know there was a booklet, yes.

Q Can you identify it?

A I can identify a booklet.

MR. ARKIN: Mr. Frezzo.

xx (Defendants Howard Friedman and Henry Hoffman Exhibit CU marked for identification.)

Q Mr. Perlmutter, is CU for identification similar to those pamphlets utilized to study for the broker's exam?

A Yes, sir.

Q Have you seen such pamphlets before?

A Yes, sir, I have.

Q What is the date of that pamphlet?

A June of 1972.

Q Do you know of your own knowledge that people that came to work for AMREP in order to become brokers utilized such pamphlets to study for an exam?

A They had to in order to take the exam.

MR. ARKIN: We offer it.

VOIR DIRE EXAMINATION

BY MS. HYNES:

Q This pamphlet relates to brokers in New York State, correct?

A Yes, ma'am.

Q Ho is the broker in New York State?

THE COURT: Who is a broker?

Q Who is the broker in New York State for Rio Rancho?

A I believe it's Daniel Monaco or was.

Q Do you know of your own personal knowledge whether Danny Monaco looked at this?

A No, I do not.

MS. HYNES: I object, your Honor. Mr. Monaco was not able to identify this.

THE COURT: What has that got to do with it?

Objection overruled.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CU received in evidence.)

MR. ARKIN: Your Honor, may I again read the table of contents?

THE COURT: Yes.

(Mr. Arkin read from Defendants' Exhibit CU in evidence to the jury.)

CROSS EXAMINATION (Continued)

BY MR. ARKIN:

Q By the way, when you testified yesterday, you mentioned that the hospitality suite for ATC was at one time at 61st Street, isn't that so?

A Yes, sir.

Q In point of fact, it was on a different floor than the eighth floor, wasn't it?

A Yes, it was.

Q With respect to salesmen who were recruited and hired by the company, the company insisted that they be trained with respect to its product, did it not?

A Yes, sir.

Q In training them they were trained from an approved company advertising, isn't that so?

A Yes, sir.

Q From the federal property reports?

A Yes, sir.

Q In fact, that is specified in the training manual, isn't it?

A Yes, sir.

Q When you hire a salesman, too, are you familiar with the contractual provisions of their contracts?

A Some parts, yes.

Q Do you know that they are required by contract, obliged not to make misrepresentations and represent their produce honestly and not to embarrass the company in any way?

A Yes, in essence that's a portion of the contract.

Q Is a part of their training also from the New York offering statement; isn't it?

A Yes, it is.

Q Company policy is to train salesmen to tell the truth, isn't it?

A Yes, sir.

MR. ARKIN: May I have 202?

MS. HYNES: There were only certain pages offered of this.

Q Just today, Mr. Perlmutter, you were shown Government's Exhibit 202 in which you identified certain pages. Do you remember that, the training manual?

A Yes, sir.

Q I now show you Government's Exhibit 202 in which certain -- certain portions of 202 have been admitted into evidence and ask if you can identify page 670 from that same manual.

A Yes, sir.

Q That is a page immediately following Government's Exhibit 202, page 669 which was offered in evidence, is that right?

A Yes, sir.

Q Are you able to identify this as being a part of the training manual?

A Yes, sir.

MR. ARKIN: We offer page 670 of Government Exhibit 202 and mark it as a defense exhibit.

MS. HYNES: I have no objection.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CV, page 670 of Government Exhibit 202, received in evidence.)

MR. ARKIN: Your Honor, may I read one paragraph of this page?

THE COURT: Yes.

(Mr. Arkin read from Defendants' Exhibit CV in evidence to the jury.)

Q This was utilized in training salesmen, wasn't it?

A Yes, it was.

Q That represented company policy, didn't it?

A Yes, sir.

Q Mr. Perlmutter, I am going to show you in the same Exhibit 202 pages 685 and ask if you can identify that as also being a portion of the training manual.

A Yes, sir.

Q That's page 685?

A Yes, it is.

Q And page 791, is that also a portion of the training manual?

A It's not the page. The page is on the bottom, sir. That's the number on top.

Q The number on top, 791?

A Yes, sir.

Q That's page 685 of the training manual?

A Yes, it is.

MR. ARKIN: We offer as two separate exhibits pages 685 and 791.

The first one, Ms. Hynes, is a three-page item.

MS. HYNES: I have no objection.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibits CW and CX received in evidence.)

Q You testified, Mr. Perlmutter, that the salesmen as part of their training, after they were recruited, were trained from the Rio Rancho property report, isn't that so?

A Yes, sir.

Q They had to go through it line by line to see what it said?

A That was a part of the training program.

MR. ARKIN: May I read, if your Honor please, one paragraph from Exhibit CX?

THE COURT: Yes.

(Mr. Arkin read from Defendants' Exhibit CX in evidence to the jury.)

Q By that it is meant, Mr. Perlmutter, isn't it, every section of the property report?

A Is reviewed and learned, yes.

THE COURT: We will have a recess.

(Recess.)

(Continued on next page.)

THE COURT: You may proceed.

XXX CROSS EXAMINATION (Continued)

BY MR. ARKIN:

Q Mr. Perlmutter, you know, do you not, that it is company policy never to represent or to have represented that there is a resale market for Rio Rancho land?

A Yes, sir.

Q That the company never allowed or permitted a representation that people could make a quick profit on their land?

A Not to my knowledge, no.

Q And the company also encouraged people to visit their land, too, didn't they?

A They certainly did.

MR. ARKIN: Mr. Frezzo, will you mark this, please.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CY marked for identification.)

Q Do you recognize CY for identification, Mr. Perlmutter (handing)?

A Yes, sir, I do.

Q What is it?

A It's a memo that I sent to Solomon Friend in January, 1971.

MR. ARKIN: We offer it.

MS. HYNES: I have no objection.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CY received in evidence.)

MR. ARKIN: May I read one sentence from that memorandum, your Honor?

THE COURT: Yes.

(Mr. Arkin read from Defendants' Exhibit CY in evidence to the jury.)

Q Mr. Perlmutter, this memorandum did restate company policy, didn't it?

A Yes, it did.

Q Which was not to tell people there was any resale or that the company would resell their property, isn't that so?

A There was enough good to say about it without saying anything bad.

Q There was enough good to say about the property without saying anything else, isn't that so?

A Yes, sir.

Q I show you Government Exhibit 1405 which you identified yesterday, didn't you (handing)?

A Yes, sir.

Q This particular Exhibit 1405, you testified that you copied in some respects from a memorandum provided you by somebody else, is that right?

A Yes, sir.

Q A competitor your your company?

A Yes, sir.

Q With respect to item 1 of Exhibit 1405, which reads, "You can cancel within six months without visiting the property," and says, "This is a forbidden statement," you know, don't you, that the only land development company up to 1974 that gave people six full months to visit their property --

MS. HYNES: Objection.

MR. ARKIN: I am asking --

THE COURT: He didn't finish his question.

MS. HYNES: I can tell by what I heard so far it is objectionable.

THE COURT: You can tell, but I can't.

Q Do you know, sir -- I will even rephrase it -- with respect to the particular competitor from whom you say you received some memorandum, that up until 1974, when New Mexico law was changed, that AMREP was the only company which gave people six full months to visit their property and cancel it for any reason whatever? Isn't that so?

MS. HYNES: Objection.

THE COURT: Objection sustained.

Q Well, this particular item, item 1, which describes the forbidden statement, "You can cancel within six months without visiting the property," that wasn't copied from anybody's memorandum, was it?

A I really don't recall. I remember copying it pretty much so from what it was.

THE COURT: I don't get this.

You say you really don't recall, but you copied it pretty much what it was from what you saw?

THE WITNESS: I remember copying it pretty much from what I saw, yes, sir.

Q Does this particular memorandum, which states that forbidden statements are, "You can cancel within six months without visiting the property, you don't have to make payments unless you want, you don't need a federal property report, this is a quick return on investments, we will resell your property any time," these forbidden statements, were they not forbidden by AMREP previous to this memo?

A Yes, yes, they were.

Q And this memo reflected company policy?

A It was reiterating the don'ts, yes, sir.

Q And you were told to send this out by Daniel Friedman, were you not?

A Yes, I was.

Q And by Mr. Carity?

A Not by Mr. Carity.

Q By Mr. Friedman?

A Mr. Friedman, yes.

MR. ARKIN: Thank you for your exhibit (handing).

Q At the area directors meetings which you testified about previously, haven't you heard Daniel Friedman tell sales managers or, rather, others who attended that meeting that the company has so much good to talk about there is no reason to tell anything to customers which is not so?

A I've heard him say that on many occasions, yes.

Q At many of these area director meetings which you attended, isn't that so?

A Yes, sir.

Q Is it part of your responsibility, Mr. Perlmutter, to instruct sales managers on the machinations of completing sales contracts?

A Yes, sir.

Q And you instructed them, did you not, that it was obligatory or required by your salesmen to obtain the customer's initials on contracts acknowledging the receipt of reports, the offering statement, the HUD property report and so forth, after the customer actually received the reports?

A Yes, sir.

(Continued on next page.)

Q So that it was company policy that customers should not put their initials down on the contract until they actually receive these reports, isn't that so?

A Yes, sir.

Q It was also a company policy, was it not, at these sales dinners and so forth that the customers received these reports before they even decided to buy?

A Yes, sir. They were on the table for the customers, yes, sir.

Q And that was company policy to see to it, isn't that so?

A Yes, sir.

Q You were asked yesterday about allocation sheets.

Do you remember that?

A Yes, sir.

Q What is an allocation sheet?

A An allocation sheet is the local office of the lots that are available -- that office has available for sale to be sold at that dinner reception.

Q Do you know that allocation sheets were necessary from a company recordkeeping point of view?

A Yes, sir. Inventory control purposes.

Q And that they were utilized, as you say, for inventory control so that no two sales offices would ever sell the same piece of property.

A That's right.

Q It was a way of administering or controlling what was being sold at any particular time, isn't that right?

A Yes, sir.

Q You didn't have disappointed customers or disappointed sales offices?

A That's true.

Q You considered that to be sound business sense, didn't you?

A Yes, to control the inventory that you had.

Q You talked about dinner parties yesterday.

Do you know that in the same line that the idea of holds or calling of holds was that so no two people at the same dinner party would be negotiating about purchasing the same piece of land, isn't that so?

A That was the purpose of it, yes.

Q And that the calling of holds insofar as company policy was, again, to control inventory?

A Yes, sir.

Q And that with respect to deletions, that they were called for the same purpose, inventory control so that once a piece of land was sold it would not be sold again?

A Yes, sir.

Q Did you ever hear of false deletions?

A No, sir.

Q You have no knowledge that that was part of company policy, do you?

A No, sir.

Q Do you even know what a false deletion is?

A No, sir.

Q So to your knowledge, it was not part of company policy to have salesmen delete lots from allocation sheets and announce sales of lots which were actually not sold?

A I haven't heard of that, no.

Q To your knowledge, that was not company policy, was it?

A No, to my knowledge it was not.

Q By the way, at dinner parties, wasn't it company policy that aside from the times when you shut the lights off to show the movies, that the room be well lit so that the people could read the contracts easily?

A Yes, sir.

Q Was it also company policy that the property reports, offering statements be available and visible to every buying unit at every dinner party?

A Yes, sir. They had to be on the table.

Q And you were in charge of distributing that literature to the various sales offices which used them at dinner parties, isn't that so?

A Yes, sir.

Q And it was also company policy, wasn't it, to permit customers or potential customers to take away from the dinner party the advertising, the property reports, the offering statements whether or not they purchased land?

A Yes. They could take whatever they wanted to.

Q You also know, don't you, that New York State Department of State inspectors visited and monitored various dinner parties over the years given by AMREP sales subsidiaries?

A Yes, I had heard that, yes.

Q And that AMREP sent notices of the schedule and place of dinner parties to the New York Department of State?

A That was mandatory, yes, sir.

Q That was required?

xx

A Yes, sir.

(Defendant Howard Friedman and Henry Hoffman Exhibit CZ marked for identification)

Q Mr. Perlmutter, do you recognize CZ (handing)?

A Yes, sir.

Q What is it?

A This is a memo to a gentleman who worked in my administration department who handled the procedure of notifying the --

Q That's okay.

MR. ARKIN: We offer it.

MS. HYNES: I have no objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit CZ received in evidence)

MR. ARKIN: Your Honor, may I read this to the jury?

THE COURT: Yes.

(Mr. Arkin read from Defendant Exhibit CZ in evidence to the jury)

Q At the close of any sale at any dinner party or any home sit, isn't it true that a customer was given a contact pack?

A Yes, sir.

Q What is a contract pack?

A 3592

A A contract pack at the point of sale is a folder that the company used where the salesman who completed the sale would take the property report and offering statement and whatever legal documents and put it into the folder and whatever literature he felt that the customer would like to have and put it in the folder and hand it to the customer to take home.

Q Isn't it a fact that the company made it mandatory, that it required that the contract pack given to any customer include the contract --

A Yes, signed contract.

Q The property report?

A Yes, sir.

Q The offering statement?

A Yes, sir.

Q And that these legal documents had to be visible when the pack was open?

A Yes, sir.

Q Just a few moments ago you identified and there was admitted into evidence Exhibit CW, which consists of pages 685 through 687 of the Prosecution Exhibit 202.

A Yes, sir.

Q Do you recall that?

A Yes, sir.

Q That has to do with the philosophy of closing?

A Yes, sir.

Q What does closing mean?

A Completing a sale.

Q To your knowledge, did the philosophy of closing set forth in the training manual set forth the philosophy of the company?

A That was the purpose of the manual.

MR. ARKIN: May I ask your Honor's indulgence to read Exhibit CW?

THE COURT: All three pages?

You can give it to the jury during the afternoon recess if you want to do so.

That is a looseleaf binder?

MR. ARKIN: Yes, your Honor.

I will do that, your Honor.

d t5b

A am

Q By the way, Mr. Perlmutter, with respect to the philosophy of closing as set forth in Exhibit CW, that was something which every salesman in the company, whoever they may be, tigers or pussycats, were required to use; isn't that so?

A Yes, sir.

Q Let's talk about price increases.

When there was going to be a price increase, sales offices were instructed of that, weren't they?

A Yes, they were.

Q The sales offices notified their customers, isn't that so?

A Yes, sir.

Q Every time there was such a notification of a sales office and thence a customer, the sales increase actually took place?

A To the best of my knowledge, yes.

Q There weren't any false notifications?

A I don't know of any.

Q Isn't it a fact that the company submitted its proposed price increases to the New York Department of State and that every price increase was approved by the New York Department of State prior to the increase being put into effect?

A Yes, sir.

Q And that price increases also had to be submitted to other states for approval, didn't they?

A Some other states, yes, sir.

Q Some other states?

A Yes.

Q With respect to the price increases and exchange, it is a fact that when a customer came to exchange his land at Rio Rancho into a building lot, that he got full credit for all of the price increases which affected his lot, isn't that so?

Shall I repeat the question for you?

A You are talking about an exchange of a lot?

Q In other words, when a customer decided to move to Rio Rancho and build his home there and he had a lot which had gone up in price over the years, he got full credit for all those price increases; didn't he?

A Yes, he got the appreciated price, yes.

Q Towards the exchange?

A In exchanging, yes.

Q So, for example, if somebody were to have bought a lot say in 1963 for $10 down and $10 a month for a total price of $795 and then in 1975 his lot or a comparable one was selling for $4,000, he could utilize

$4,000 as a credit towards the purchase of say a home and a lot, isn't that so?

A Yes, sir.

Q So if, for example, he bought a home and a lot in Corrales --

MS. HYNES: Your Honor, can we fix a period of time?

MR. ARKIN: Yes.

Q Assuming he bought a lot and a home in Corrales in 1972 or 1973 and he had purchased his first lot at $10 down and $10 a month in 1963 and that that lot which he purchased in 1963 had gone up in price to, say, $4,250, he could utilize the entire $4,250 towards the purchase of a house and a lot in Corrales, isn't that so?

A According to my understanding he got full credit for what the lot was selling for currently, right.

Q Indeed, did you know that the prospective home builder who had purchased his lot say in 1963 or 1964 decided not to utilize an AMREP building but to use an outside builder, somebody else who built houses at Rio Rancho, that the custom has been that the outside builder gave full credit to the appreciated price of that lot?

MS. HYNES: Can we fix a period of time?

THE COURT: When?

Q In the years 1972 to 1975.

A Yes, the outside builder became like a home-sit owner, right.

Q The outside builder gave the customer the appreciated price of his lot towards the purchase price of the home, correct?

A The same as the company.

Q In order to compete with the company?

A To the best of my knowledge, yes.

Q Do you know wht the fly and buy program was?

A Yes, sir.

Q What was it?

A The fly and buy was a test program that was tested at our ATC office, New York office, to invite people to a reception and just to sign them up for a trip for a visit to Rio Rancho where the land was sold on site rather than in New York.

MS. HYNES: Can we fix a period of time, your Honor?

MR. ARKIN: That is my next question.

THE COURT: Go ahead, put it.

Q That particular operation was in effect from June of 1974 through December of 1974; wasn't it?

A Yes, sir.

xx (Defendant Howard Friedman and Henry Hoffman Exhibit DA marked for identification)

Q Mr. Perlmutter, do you know what DA is?

A What what is?

Q DA? Excuse me, do you know what the exhibit marked DA for identification is?

A Oh, this exhibit?

Q The exhibit, yes.

A Yes, sir.

Q What is it?

A This is a memo that I had sent to Irving Roth.

MR. ARKIN: We offer it.

(Pause)

MS. HYNES: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit DA received in evidence)

MR. ARKIN: Your Honor, may I read just a few lines from this?

THE COURT: Yes.

MR. ARKIN: Thank you.

(Mr. Arkin read from Defendants Exhibit DA in evidence to the jury)

Q Who is Irving Roth, Mr. Perlmutter?

A Irving Roth was vice-president of sales at Rio Rancho on property.

Q Was he the fellow who ran Roth Realty in New York?

A Originally, yes.

Q Then he moved to Rio Rancho?

A He moved to Rio Rancho and became sales manager, vice-president of sales at Rio Rancho.

Q He now lives in Rio Rancho?

A Yes, he does.

(Mr. Arkin continued reading from Defendant Exhibit DA in evidence to the jury)

Q As a result of the fly and buy program, you know, don't you, that of the 142 buying units, meaning husband and wife or otherwise qualified unmarried person, that 69 people purchased land there after seeing it?

A Yes, sir.

Q And that seven others of this 142 purchased homes and condominiums?

A Yes, sir.

Q And that, therefore, the total closing rate was 53.5 percent?

A Those are the records, sir.

Q With respect to company refunds given to customers, do you know if there are two types of decisions?

A Yes, there are.

Q What kinds of decisions are there?

A One is a state 48 hour recision notice and the other one is a HUD 72 hour recision notice.

MS. HYNES: Your Honor, can we fix a date?

THE COURT: Yes.

Q Would you please tell his Honor and the jury the period of time in which the 48 hour recision provision was in effect, if you know, and the period of time for which the federal recision provision was in effect, if you know?

A I believe the 48 hour was in effect as long as I can remember.

The 72 hour HUD I don't remember the date. I don't remember when the 72 hour went into effect. That may have been '72.

Q Was it about '72?

A Somewhere around there. I don't remember exactly.

Q Towards the middle of '72?

A It could have been. I don't remember exact dates.

Q The federal one is a truth and lending recision notice, isn't it?

A Yes.

Q Will you describe what that is?

A The truth and lending, a purchase has 72 hours to rescind their contract from the time it is accepted and signed by an officer of Rio Rancho.

Q For any reason, is that so?

A For any reason whatsoever.

Q Just their own whim, if you will?

A For any reason whatsoever. The mechanics, if you would like to know how the mechanics work I can tell you.

Q I don't think we have to go into the mechanics in particular.

A Anyway, the contract was signed at a dinner party and went to Rio Rancho and Rio Rancho approved it and completed whatever they had to and forwarded to the customer with a recision notice and the customer had I think from the time Rio Rancho mailed it seven days to get it back.

Do you want me to complete my statement?

I said that from the time it leaves Albuquerque, leaves the administration office they have seven days so in essence from the time the customer signs the contract at a dinner party until it gets back to Rio Rancho, if they do rescind, could be --

Q What you are saying, Mr. Perlmutter, is that a contract is signed and then it is sent to Rio Rancho --

MS. HYNES: Your Honor, the witness has testified --

THE COURT: Let the witness tell us what he is saying, not you, Mr. Arkin.

A Okay.

Q Are you saying, Mr. Perlmutter, that in practical fact it takes -- a customer actually gets more than three days to rescind?

A From the time they actually sign the contract, yes.

Q How many days does a customer get in actual fact?

A I would say at least fourteen days.

Q To rescind for any purpose whatever?

A Yes, sir, in time frame.

Q Is there anything about the truth and lending rescission notice which makes it only applicable to people who intend to utilize Rio Rancho or any other place as their principal place of residence?

A Yes, sir.

Q So that the truth and lending rescission notice as a matter of law is only to apply to somebody --

MS. HYNES: Your Honor, I hate to object, but Mr. Arkin is testifying.

THE COURT: The question doesn't follow the one before.

MR. ARKIN: All right, I will rephrase it.

Q Do you know whether the company was obliged to give the truth and lending rescission right to every person to whom it sold land?

A Not to every person, no.

Q Was required to give it only to whom?

A To people who said that they do not intend to use it as their principal residence, I believe.

Q What did the company do in its practice?

A The company for a period -- I don't remember the exact time when it started, sent it to everybody.

Q Everybody who bought land?

A Regardless of what they checked in the contract.

Q It didn't make any difference whether they intended to use the Rio Rancho land as their principal place of residence of not?

A Yes, sir.

MS. HYNES: Can we set the period of time, your Honor?

Q What is the period of time which the company gave people this privilege which it didn't have to give to them?

A I would say it was from maybe late '72 or early '73 on.

Q The way this worked is a customer merely had to send back a rescission notice to Rio Rancho, isn't that so?

A Yes, sir.

Q No conditions?

A No conditions.

Q What is the New York State 48 hour rescission?

A To the best of my knowledge if a person did not receive a property report or offering statement prior to them signing a contract, they had 48 hours to get their money back. All they had to do was contact the local office and it was arranged for them to get their money back.

Q No conditions to that?

A No conditions that I know of.

Q What was the visitation refund?

A The visitation, anybody who came down to Rio Rancho within a six month period from the time that they purchased and checked in and visited with a salesman to see their lot and for any reason whatsoever if they wanted their money back, they just completed a form and their money was refunded to them.

Q The requirement was that the customer had to visit Rio Rancho, isn't that so?

A Yes, sir.

Q It was company policy, wasn't it, that the customer knew that as a condition of exercising this six month visitation privilege that in point of fact they had to visit the property, isn't that so?

A Yes, sir.

Q It was also a company policy to tell every person before they bought the property how much was involved cost-wise in visiting the property?

A I am sorry, would you please repeat that question?

Q Was it not company policy to inform tell every customer how much it cost to visit the company property?

A I believe so, yes.

Q With respect to this particular visitation privilege, the company gave back the money to the customer if the customer had any reason at all for not wanting the property, isn't that so?

A That's right, sir.

Q After seeing the property?

A Yes, sir.

Q By the way, with respect to foreign sales, people who bought overseas did not have visitation privilege, isn't that so?

A That's right, sir.

Q But it is a fact, isn't it, that 95 percent of the sales made by AMREP overseas had to do not with Rio Rancho but with Silver Springs?

A I don't know the exact percentage, but I would say somewhere around at least 90 percent.

Q Somewhere between 90 and 95?

A Yes, I would say that.

Q Do you know what a vacation travel allowance is?

A Yes, sir.

Q What is it?

A A vacation travel allowance is an amount of money that a customer would get after he visited the property and it was a credit toward the last payment of his account, which would help defray the cost of the trip.

Q The purpose behind this was to encourage people to actually visit their property in Albuquerque, isn't that right?

A Yes, sir.

Q That was because the company was proud of Rio Rancho?

A They certainly were.

Q They wanted the customers to see it?

A Yes, sir.

Q Do you know about gratuitous refunds?

A Yes, sir.

Q Do you know that the sales contract permits only one sixty day moratorium?

A Yes, sir.

Q What is a moratorium?

A A moratorium is a period of time when a customer wouldn't have to for some reason whatsoever, if they couldn't make their payments, they didn't have to make it during that period of time.

Q They would not have to make it during that period of time?

A Yes, sir.

Q If they had a good reason?

A Yes, sir.

Q Each customer when they signed the contract had a right to one sixty-day moratorium?

A Yes, sir.

Q Did you know that customers got additional moratoriums, more than sixty days, didn't they?

A Yes, sir, I know that.

Q You knew, didn't you, that the company had the right or you know that the company had the right to cancel contracts and forfeit customers' monies if they don't make their monthly payments?

A Absolutely.

Q And yet despite this right of the company to cancel and forfeit, they did give additional moratoriums, didn't they?

A Yes, they did.

Q The company has also granted refunds to customers after the sixty day moratorium, total refunds because they had health problems?

A There were reasons why refunds were given, yes.

Q Was health one o. them?

A It could have been one of them, yes.

MS. HYNES: Your Honor, does this witness know or is he guessing?

Q Have you heard, do you know --

MS. HYNES: If he has heard, then I objec on hearsay grounds.

A I know that gratuitous -- may I answer, sir -- I know that gratuitous refunds have been given because I receive a computer printout and one of the categories is gratuitous refunds. That is the best way I can answer it.

Q And that financial -- where a customer has certain financial problems, financial hardship, the company has also given refunds in those situations?

A That's one of the reasons for gratuities.

Q Do you know that where a customer has established that a salesman might have made unauthorized misrepresentations to him, that the company will also give refunds?

A Would you please repeat that, I am sorry.

Q Do you know that where a customer is told something by a salesman, not authorized by the company, but which turns out to be untrue, that the company gives a refund to the customer?

A They have done it, yes.

Q And that the salesman loses commissions when that happens?

A Yes, sir.

Q Do you know what a cut-back is?

A Yes, sir.

Q What's that?

A A cut-back of a customer, if he has too much property and they want to take some of the money from one piece of property and apply the principle into another piece of property, that's a cut-back.

Q Meaning that the customer would end up with less property than he originally purchased?

A And the money put into the one purchase.

Q All the money he paid to the company put into the purchase he still retained, isn't that so?

A That's right, yes.

Q Many times when this takes place a customer ends up owning his lots paid in full?

A It may very well be paid up in full.

Q So that if a customer, say, owned three lots and had paid for, say, hypothetically, half of those three lots and he was cut back, let's say a third of those three lots, he paid for one third of each of the three lots and they were bought for the same price, it is conceivable that he could end up with one lot free and clear, is that true?

A That's true, yes.

Q Has the company also reduced monthly payments?

A They certainly have.

Q To help people retain their property?

A Yes, sir.

Q When they could have otherwise forfeited them?

A Yes, sir.

Q Do you know that the company tours where people went out and visited their property were provided at substantial savings to customers?

Let me put it another way. Do y understand the question?

A No.

Q Let me repeat the question.

When somebody came to take a company tour, isn't it so that the company subsidized a portion of that tour?

A Yes, they did.

Q Somebody, had they wanted to go on their own to Albuquerque or Rio Rancho and paid their own air fare, would have had to pay more?

A Yes, sir.

Q They would have had to pay more if they stayed in their own motel or hotel?

A Yes, sir.

Q It was a bargain to go on the company tour to Albuquerque?

A It was certainly less than going by yourselves.

Q And that the approximate cost to the company of underwriting these tours, subsidizing these tours, was about 50 to $100 per buying unit or per couple?

A That's in the general area, yes.

Q Is it also a fact that in order to exercise the six-month privilege, the one we just spoke about, the customer didn't have to go on a company tour but could go out there themselves and make a registered inspection?

A That's right.

Q Is it also a fact that the company encouraged its salesmen to take tours and to visit the property which they sold?

A Yes, they did.

Q Because they wanted their salesmen to have product knowledge?

A Yes, sir, firsthand knowledge.

Q And understand what the property was about?

A Yes, sir.

Q The company believed in its product?

A Absolutely.

Q Isn't it a fact, too, that most of the tours, I am talking about company tours now, since 1971 have stayed at the Panorama Inn?

A Yes, sir.

Q That the Panorama Inn has expanded since 1970 or '71?

A Yes, sir.

Q More rooms have been added on?

A Yes, I know what you mean.

Q Since 1971 there were 378 tours, do you know that?

A Yes, I know the statistics.

Q And that 287 of those tours stayed at the Panorama Inn?

A Yes, sir.

Q 81 stayed at downtown hotels?

A Yes, sir.

Q And that ten of those tours were split between downtown and Panorama?

A Yes, sir.

Q Is it also a fact that some of the downtown hotels took tours when the tours were too large to be accommodated at Panorama Inn?

A Yes, they couldn't all be handled at one place.

Q You didn't want to split them up if you could avoid it?

A That's true.

Q And the Panorama Inn was not as large as some of the downtown hotels?

A That's right.

Q Sometimes you had two tours in town?

A If we had a big tour and a small tour, we would accommodate the small tour at the Panorama Inn and the big tour downtown so they could be together.

Q The company sought to have people who were on company tours stay right on the property at the Panorama Inn, isn't that right?

A If at all possible, yes.

Q How many trips have you made to Albuquerque since 1969?

A Well, I averaged I would say about five, six trips a year so it's seven years, 40 trips, 35, 40 trips.

Q As many as 50?

A It could have been.

Q You have been there a lot, though?

A Yes.

Q And repeatedly over the seven years you have been with the company?

A Yes, sir.

Q You have seen Albuquerque grow tremendously in that time, haven't you?

A I have.

Q You have seen the growing towards the northwest, too, haven't you?

MS.HYNES: Objection, your Honor. This was the line of questioning you would not allow the government to go into.

THE COURT: This isn't the witness for this.

Q Do you know where Coors Road is?

A Yes, I do.

Q What is Coors Road?

A Coors Road is the road you get on when you come off the highway going up toward Rio Rancho.

Q From Albuquerque?

A From Albuquerque, yes, sir.

Q Since you have been with the company that road has been widened to four lanes, hasn't it?

MS. HYNES: Objection.

THE COURT: Overruled. I stopped you on the northeast portion of your examination.

A Yes, sir.

THE COURT: Go ahead.

Q Gas stations have been built?

A Oh, yes, sir.

Q A night club?

A Yes, sir.

Q Restaurants?

A Yes, sir.

Q La Luz, do you know what La Luz is?

A That's a housing development.

Q Taylor Ranch?

A Taylor Ranch, yes, that's pretty recently.

Q What is that?

A Taylor Ranch is a large development out on Coors Road.

Q You have seen factories grow up there, too?

A Yes.

Q Did Mountain Bell put a building in?

A Yes, Mountain Bell and another one I remember, too.

Q Excuse me?

A There's another one I remember, pants factory, a big pants factory.

Q You have seen the shopping center grow up?

A Yes.

MS. HYNES: Which shopping center are we talking about?

THE COURT: Let him finish.

A At the corner of Coors Road and 528, yes, sir.

Q And also from Coors Road you can see the new high school, can't you?

A Yes, sir.

Q That was built just a few years ago?

A Yes, sir.

Q And new medical offices are also along Coors

Road, aren't they?

A Yes, they are.

Q You have also seen Rio Rancho grow rapidly in that time, haven't you?

A I certainly have.

Q In 1969, when you joined the company, there were only about 485 houses there?

A Yes, sir.

Q And that in October of 1976, there were about 1700 houses?

A Close to it, yes, sir.

Q And that when you started for the company in 1969, there were 1500 people living at Rio Rancho?

A Yes, sir.

Q And that now there are close to 6500?

A Absolutely.

Q And that when you started there were only eight businesses at Rio Rancho and that in October, 1976 there were 65?

A Approximately that amount, yes, sir.

Q Do you know that AMREP made a corporate decision to move its national administrative headquarters to Rio Rancho?

A Yes. I was involved in that movement.

Q You helped make that decision?

A No, I helped them move.

Q You helped them move?

A Yes, sir.

Q You helped set it up administratively, you mean?

A Yes, sir.

Q You didn't carry anything cross country?

A No.

Q Is there a building there for the administration headquarters?

A There is.

Q How many employees approximately are in that building?

A I would say over 300.

Q Working for Rio Rancho?

A Yes, sir, I believe so, somewhere in that neighborhood. I don't know exactly.

Q But a whole building was given over to the administration headquarters, isn't it?

A Yes, it is.

Q The reason that AMREP moved its national administrative headquarters to Rio Rancho was that it was committed to Rio Rancho and its growth, isn't that true?

A I honestly believe so.

Q Based on all the time you have been with AMREP since 1969, in your discussions with Mr. Friedman, Carity and Mr. Friedman and all the others here who are named as defendants and your visitations to Rio Rancho, isn't it a fact that the company and all of its officers intended to develop Rio Rancho?

MS. HYNES: Your Honor, can we have what discussions Mr. Arkin is talking about? A specification of discussions?

Q Have you had discussions with any of the officers of AMREP in which they said --

MS. HYNES: Can we ask what the discussions were, your Honor?

MR. ARKIN: I will do that.

MS. HYNES: Rather than have Mr. Arkin testify.

THE COURT: This is cross examination, Ms. Hynes. He is not limited by the rules of direct examination.

MR. ARKIN: I will ask him.

THE COURT: He can do it either way he wishes.

Q Did you ever have discussions with Mr. Howard Friedman with respect to what he said in words or substance that he saw a future for Rio Rancho and intended to see it develop?

A I have heard him say that many times.

Q That he believed in Rio Rancho?

A Absolutely.

Q He believed it would grow?

A Yes, sir.

Q And he and the company were dedicated to it?

A Yes, sir.

Q And the same with Mr. Carity?

A Yes, sir.

Q The same with Mr. Daniel Friedman?

A Yes, sir.

Q And Mr. Hank Hoffman?

A Yes, sir, as far as I know with Hank. As I said, my dealings with Mr. Hoffman weren't that much, but I would say the same thing for all the officers.

Q I take it you didn't know Mr. Oberman, isn't that so?

A No, I didn't.

Q With respect to Mr. Blum, you didn't see him very often?

A No, on occasion.

Q You never heard anything to the contrary from any of these people, did you?

A If I did, I wouldn't be with the company.

Q You wouldn't have stayed with the company?

A No, sir.

Q You have stayed with the company since it has been indicted?

A Yes, sir, I have.

Q Because you believe they intend to develop Rio Rancho, too?

A I honestly do.

Q Do you know what the five year exchange is?

A Yes, sir.

Q Please explain that to his Honor and the jury.

A If a customer buys a lot in Rio Rancho and any time during the five year period he wants to exchange it for another lot in a different section, he can do it and this lot is exchanged at the current selling price of whatever the lot is today at the time he makes the exchange.

Q So that if somebody buys a lot say in 1970 in unit 22 or 23, for example, and wishes to exchange it for a lot in say unit 10, they are able to do that any time within five years, is that so?

A Yes, sir.

Q That is without having to build a house?

A Yes, sir, right.

Q When they exchange it they get the full appreciated price of their lot which they are using for that exchange, isn't that so?

A Yes, sir, during the contractual period, yes, sir.

Q What is a building exchange?

A That's exchanging into a building area. As I repeated earlier, I am not familiar --

Q You are able to distinguish between the two kinds of exchanges, aren't you?

A Oh, yes.

Q That's what I am asking you to do.

A Okay.

Q Would you distinguish between the exchange you just spoke about?

A The five year exchange and the exchange from one lot to another and exchange into a building area is exchanging your lot into a house and lot in the building area.

Q When you wish to build?

A When you want to build.

Q In a building area?

A Yes.

Q That goes on forever?

A Yes, sir.

Q That's not limited by five years?

A No, sir, any time.

Q When you exchange your lot in the building exchange, you get the full appreciated price of that lot, too, don't you?

A Yes, sir, I believe so.

Q You can use that value towards the purchase of a house and lot?

A Yes, sir, it is an exchange.

Q Whether that house and lot be -- rather that house be built by AMREP or somebody else?

A Yes, sir.

Q And when the customer exchanges his lot into the building area, he comes to own that lot, doesn't he?

A He owns the house and lot. It is his.

Q The lots in the building areas where people live on them, they own their lots, don't they?

A Absolutely.

Q The company doesn't retain the title to the lot?

A The customer is deeded his house and lot when he purchases.

Q So that when you say that the core areas or the building areas are owned by the company, they are only owned until particular people take lots and build homes on them, isn't that so?

A That's true.

Q The customers get title to the land free and clear?

A Yes, they do.

Q When a customer exchanges into Corrales Heights, they do get a quarter acre lot, am I correct?

A Yes, they do.

Q But if somebody wants a half acre lot, they can exchange into another unit?

A Yes, they can.

Q In Corrales is different from other units in that the costimer gets certain improvements and amenities which the company never promised and was never obliged to give anybody?

A That's right.

Q Which included underground utilities?

A Yes, sir.

Q Paved streets?

A Yes, sir.

Q Curbs and gutters and a sewer system?

A Yes, sir.

Q Just a while ago when you were on direct examination Ms. Hynes askedyou whether salesmen got a commissior when a customer decided to move into Corrales Heights, am I correct in that?

A Yes, the off-site commission.

Q He got a commission for doing that?

A Yes, sir.

Q It is also true, isn't it, that if somebody built an AMREP house, bought an AMREP house in unit 11, unit 16 or unit 7 or Panorama Heights that the salesman who sold that house also got a commission?

A Yes, sir.

THE COURT: Are you nearly finished with your cross examination?

MR. ARKIN: No, I am not, your Honor. I have some period of time to go.

THE COURT: I was hoping against hope.

We will adjourn for lunch. See you at 2:15.

(Luncheon recess.)

***

pm EOjw 1

AFTERNOON SESSION

2:15 P.M.

(In open court - jury not present)

THE COURT: Yes.

MS. THOMPSON: Your Honor, this is my application. Yesterday we were given the 3500 material for a man named Mr. Woodward --

THE COURT: Who?

MS. THOMPSON: Woodward who made a film of Rio Rancho, which the government intends to put in evidence. I called Ms. Hynes this morning to make arrangements to see the film. She told me she was unable to give me a response until after Mr. Perlmutter was off the stand.

I hate to put the burden on the Court, but our problem is we would like to see the film this evening and we need some advance planning in order to be able to get a projector down. We need our own projector. Ms. Hynes says she will not be able to give me an answer until Mr. Perlmutter is off the stand.

THE COURT: Why can't we arrange to do that this afternoon?

MS. HYNES: I will try to make the arrangement.

eojw 2

Ms. Thompson just came up to me about five minutes ago and that is the first time I spoke to her. They have already seen the film. If she wants to see it a second time, I will make arrangements. The first time she spoke to me was five minutes ago.

MS. THOMPSON: Your Honor, so the record is clear, I called her office at 9:00 o'clock this morning and I spoke to her before lunch.

THE COURT: You have five other people helping you. The film is there, isn't it?

MS. HYNES: It is back in my office and I do not have five people sitting next to me.

THE COURT: You have had five people here on and off. Get on the phone and call one of them and tell them to get it available.

MS. HYNES: Why don't you go over to my office and tell them to get it available for you.

MR. ARISOHN: Your Honor, there is another matter.

We were given the 3500 material either yesterday or the day before of a man by the name of Ray Seay. He is an employee of the Mountain Bell Telephone Corporation in Albuquerque, New Mexico.

On November 17th or 18th I had served on

Mr. Seay's employer, the Mountain Bell Company, a subpoena which I would like to have marked as a Court Exhibit which required the production in court yesterday of certain documents.

I have been informed --

THE COURT: Wait, two of your people just came in. Which one of them do you want to get the film, Ms. Hynes?

MS. HYNES: Your Honor, I take it -- John, will you go over and get the film.

Your Honor, we will make arrangements to have Ms. Thompson see it after court sometime this evening.

THE COURT: She would like to know now so let's do it now. You said sometime this evening, 4:30, 5:00, 6:00.

MS. HYNES: Whenever we break. Whenever we break, after court.

THE COURT: She will be able to have a projector down at 5:00 o'clock and look at it?

MS. THOMPSON: Yes, fine.

THE COURT: All right.

MR. ARISOHN: With respect to the subpoena again, your Honor, I have been informed that the subpoena was served, that documents were compiled and that they were sent to my office together with a covering letter on November 22, 1976. Those documents never reached my office and I would respectfully request that the government not call Mr. Seay until those documents have reached my office.

I have made an inquiry in Albuquerque today to have them send me a duplicate set of documents.

Ms. Thompson, who was more familiar with what those documents were which were supposed to be sent to me, can put on the record what they were and I think from the documents your Honor will be able to see that the documents are essential to cross examining Mr. Seay with.

MS. THOMPSON: Do you want that on the record, your Honor?

THE COURT: I don't need that.

When do you intend calling this Mr. Seav?

MR. ARISOHN: I believe that is the way his name is pronounced, it is S-e-a-y.

THE COURT: When do you intend calling him?

MS. HYNES: Mr. Kaufman will handle that, your Honor.

MR. KAUFMAN: Your Honor, he is on the schedule of witnesses I would say about the fifth witness from where we are now. I cannot predict how fast or slow we are going to go, but that is about the order.

THE COURT: We are going nice and slow now.

MR. KAUFMAN: I know. I had originally thought he may have been testifying today or tomorrow. It doesn't appear that way. I am not sure which documents Mr. Arisohn and Ms. Thompson are referring to.

If they are documents that we have in our possession, we will be glad obviously to make them available if they can tell me what documents they are.

THE COURT: At 5:00 o'clock, Ms. Thompson, when you are viewing the film, you could then tell Mr. Kaufman the documents which you want and need or intended for the purpose of cross examining the witness.

MR. ARISOHN: Thank you, your Honor.

THE COURT: In the meantime don't stop them from sending copies to you.

MR. ARISOHN: No, that is in the works, your Honor.

MR. ARKIN: Your Honor, I might save about five or eight minutes on cross examination if I could have Ms. Hynes --

THE COURT: Is that all?

ojw 6

MR. ARKIN: I will make it very brief. I promise you I will be on and off very quickly this afternoon with Mr. Perlmutter, but I do have a request of Ms. Hynes, pages 792 to 849 of the Government Exhibit 202, that is that training manual, I neglected to have Mr. Perlmutter say it was part of the training manual and have it admitted in evidence.

If Ms. Hynes would agree that pages 792 to 849 were part of the training manual and agree that it be admitted in evidence, that just might save --

THE COURT: Maybe I misunderstand this 202. I thought it was offered in to the extent that the pages indicated the days or pardon me, the dates when they took effect.

And that the pages that were undated were not offered.

MR. ARKIN: That is a different thing, your Honor. It is a different thing.

THE COURT: Maybe I have the wrong exhibit.

MR. ARKIN: I think you are talking about 203, your Honor.

THE COURT: Let me take a look.

You are right. 202 manual used in training class, Simons training class.

ojw 7

Isn't the whole thing in?

MR. ARKIN: I have already put some parts in and I want to put in pages 792 to 849.

THE COURT: Hold it. What do your records show came in under 202?

(Pause)

THE COURT: I am sorry. I mixed up 202 and 203 in my mind.

You now wish to offer some additional pages?

MR. ARKIN: Yes, just pages 792 through 849. I am not going to ask your Honor to read any one of them.

THE COURT: Ms. Hynes.

MS. HYNES: I have no objection.

THE COURT: All right. We will have to give them a number.

THE COURT: A few of those pages are already in.

MR. ARKIN: Pages 796 and 844 are in.

THE COURT: That is right, so you are offering 792 through 849 exclusive of --

MR. ARKIN: 796 and 844, which are already in evidence.

THE COURT: All right. Give it DB.

xx (Defendant Howard Friedman and Henry

ojw 8

Hoffman Exhibit DB received in evidence)

MR. RUBINO: May I make a request, your Honor. May I be excused about 4:15 today. Mr. Arkin will cover for me.

THE COURT: Will you cover for Mr. Rubino?

MR. ARKIN: I am happy to.

THE COURT: Mr. Oberman has no objection.

DEFENDANT OBERMAN: No, your Honor.

THE COURT: All right.

(Jury present)

LAWRENCE PERLMUTTER, resumed.

THE COURT: You may proceed.

MR. ARKIN: Thank you, your Honor.

CROSS EXAMINATION CONTINUED

BY MR. ARKIN:

xx

Q When we left off we were talking about Rio Rancho.

Mr. Perlmutter, is the company continuing its building program at Rio Rancho today?

A Yes, they are.

Q Despite the fact of this indictment?

A Yes, sir.

Q Since May of 1976, 38 houses have been built by AMREP and sold there, isn't that so?

A Yes, sir.

Q And 52 additional houses are in the process of being built and have already been sold?

A Yes, sir.

Q 39 additional houses are planned and await mortgage approval?

A I believe so, yes, sir.

Q Don't you know that 52 additional binders --

A Binders, yes, sir, that I know.

Q What is a binder?

A A binder is a deposit received from a customer intending to go into a purchase agreement to buy a house.

Q The figures which we have just spoken about don't include those houses being built by outside builders on Rio Rancho, isn't that so?

A That is true.

Q There are outside builders at Rio Rancho now?

A Yes, there are.

Q That are building houses for people?

A Yes, there are.

Q On lots which have been exchanged into the building area?

A Yes, sir.

Q Do you know that outside builders have purchased lots from homesite owners and have themselves exchanged them in and built houses on those lots?

A Yes, I know that.

Q And that those outside builders -- excuse me, those outside builders are from the Albuquerque area, aren't they?

A Yes, they are.

Q To that extent you know there is a resale market, don't you?

MS. HYNES: Objection.

THE COURT: Sustained.

Q Do you know that in Unit 7 there are now 15 lots ready to build on?

A Yes, sir, I do.

Q Water lines have been extended and utilities and electricity are in place on those lots?

A Yes, sir.

Q These particular lots are in Blocks 54 and 55, aren't they?

A Yes, sir, they are.

MS. HYNES: Of what unit, Mr. Arkin?

MR. ARKIN: Of Unit 7.

end t

pm

Q And that 47 additional lots in Blocks 53 and 54 of Unit 7 are now being prepared?

A Yes, sir, they are.

Q That three homes in Unit 7 have been sold and are now occupied?

A Yes, sir.

Q Do you know that on February 25th of 1975 that a home was sold in Unit 7 for $22,000 not including the land?

A That is the information I have, yes, sir.

Q Excuse me.

A That is the information I have, yes, sir.

Q And that on May 28th -- not May, but April 28, 1975 a house was sold in Unit 7 for $23,721 not including the price of the land?

A Yes, sir.

Q On October 4, 1976 a house was sold in Unit 7 for $26,570 not including the land?

A Yes, sir.

Q Isn't it also a fact that one spec house has been completed by the company in Unit 7?

A Yes, it has.

Q What is a spec house?

A A house being built to be sold to a purchaser when they are ready to buy it. It is a company built home.

Q Which the company hopes to sell to somebody?

A Which the company hopes to sell, yes.

Q Another spec house is also under construction in Unit 7.

A Under construction, yes, sir.

Q Is Unit 17 a ranchette area?

A Yes, it is.

Q By the way, how far is Unit 7 from the gates of Rio Rancho?

A I cannot answer that exactly. I don't know.

Q It's a fact, isn't it, that eight lots are today prepared for building in Unit 17?

A Yes, they are.

Q That six of those lots are in Block 77?

A Yes, sir.

Q And two in Block 58?

A Yes, sir.

Q And that there are now two homes in Unit 17?

A Two homes being built, yes.

Q One was recently sold, that is September 15, 1976 for $57,910?

A Yes, sir.

Q And the other in October of 1976 for $60,900?

A Yes, sir.

Q And that a lot was sold in Unit 17 in October of 1976 for $23,350?

MS. HYNES: What lot are we talking about, Judge?

THE COURT: Ask him. What lot are you talking about?

MS. HYNES: A lot in the building area.

Q A lot in Unit 17. I am identifying it by unit.

Was there a lot sold in Unit 17?

MS. HYNES: Your Honor, there are building areas and non-building areas in Unit 17.

THE COURT: That is right.

Q I am asking about a lot in Unit 17.

THE COURT: There can be thousands of lots but they are not in building areas.

MR. ARKIN: I will rephrase my question, your Honor.

Q Was there a lot in the building area of Unit 17 sold in October of 1976 for $23,350?

A Yes, there was.

oj 14

Perlmutter - cross

Q The customer is going to build his own house on that lot?

A Yes, he is.

Q Isn't it a fact that today at the present time there are nearly 900 lots, I am talking about Rio Rancho now, either prepared or being prepared for exchange into a building area at Rio Rancho?

MS. HYNES: Your Honor, there has two parts to it.

THE COURT: Divide that.

We have been using the term homesite owner, have we not, as a person who has a lot in a non-building area.

MR. ARKIN: Right, can exchange it into a lot in the building area.

THE COURT: You mean there are 900 homesite owners --

MR. ARKIN: No, let me ask the question again. Perhaps I didn't make it clear, your Honor. I am awfully sorry if I didn't.

Q That there are presently within the building areas at Rio Rancho 900 lots either right now ready for building or in the process of being ready for building.

A Approximately, yes.

Q Of those 900, 62 are in Unit 7?

A Yes, sir.

Q And 511 are in Unit 11?

A Yes, sir.

Q And 24 lots in Unit 16?

A I believe so, yes, sir.

Q And 33 lots in Country Club Hills?

A Yes, sir.

Q And 59 lots in Rolling Hills?

A Yes, sir.

Q 130 lots in Panorama Heights?

A Yes, sir, I believe to the best of my knowledge that is correct.

Q 76 in Corrales Heights?

A Yes.

Q Rolling Hills is an area of Rio Rancho?

A That is a section, yes.

Q As is Panorama Heights.

A Yes, sir.

Q And Country Club Hill?

A Yes, sir.

Q These lots which I have just mentioned and which you have just testified about, those are only a portion of the lots reserved in the building areas now for building, isn't that so?

A I believe so.

Q Is it a fact, Mr. Perlmutter, that the company is now selling homes at Rio Rancho and successfully competing in the local Albuquerque market?

MS. HYNES: Objection.

THE COURT: Sustained. I don't think this is the man to do it.

Q Is it a fact, Mr. Perlmutter, that recently the lowest price for a house at Rio Rancho was $27,500 including land?

A No, it was lower than that.

Q How low was it?

A I believe it was a little bit below $25,000 is the lowest priced lot and home together we have.

MS. HYNES: Can we fix a period, your Honor?

THE COURT: He said now.

MR. ARKIN: Now was my question.

Q Is that now?

A Yes.

Q Today in 1976?

A Yes, sir.

Q It has been lower in the past, hasn't it?

A What do you mean? I don't understand your question.

MR. ARKIN: I will withdraw it.

Q Do you own lots at other land developments?

A Yes, I do.

Q The company required you to buy these lots so you could find out what other company policies were with respect to its customers?

MS. HYNES: Objection.

THE COURT: Sustained.

MR. ARKIN: Your Honor, may I make an offer at the side bar?

THE COURT: No.

Q Do you kow Len Geller?

A Yes, I do.

Q Daniel Monaco?

A Yes.

Q Who was Mr. Geller?

A Mr. Geller was the area director in the New York area for Rio Rancho.

Q He is no longer with the company, is he?

A No, he isn't.

Q Do you know who Dan Monaco is?

A Dan Monaco was manager of ATC.

Q Both of those men were terminated for swindling

Rio Rancho and its customers, isn't that so?

A Yes, sir.

Q What took place, if you know, I am asking you, was that these people took refund monies rightfully due to the customer and kept it for themselves, isn't that so?

A Yes, sir.

MS. HYNES: Objection, your Honor.

THE COURT: That is already in the record so there is no point to the objection.

A Yes, sir.

Q Isn't it true that the company has made good to all of those customers who were taken advantage of by Mr. Geller and Mr. Monaco and given them back their money?

A To the best of my knowledge, yes.

Q How long have you known Howard Friedman?

A Since I started with the company in May of 1969.

Q Do you see him on a regular basis?

A Yes, I do.

Q You have dealt with him on a regular basis?

A Pretty much so.

Q What is your opinion of his character, his integrity, his decency, his law abidingness?

MS. HYNES: Objection.

THE COURT: He is asking a character question. What is the objection?

MS. HYNES: The form of the question.

THE COURT: Overruled.

A I am not much for adjectives, but in my opinion Howard Friedman is the most upstanding,upright man I have ever met whose concern for people is unreal. That is his main concern of people.

Q Unreal?

A I mean his man concern are for people. That is what he thinks about all the time.

Q Honesty?

A As far as I know absolutely in my dealings with him.

Q What about Mr. Chester Carity?

A Mr. Carity also in my opinion is one of the brightest down-to-earth individuals and honest that I ever had the pleasure to work with.

Q What about Henry Hoffman?

A My dealings with Henry Hoffman have been very few and far between.

THE COURT: That would disqualify him.

Q What about Daniel Friedman?

A Daniel Friedman I worked for and I hope with for all these years and the most sincere, devoted, dedicated man I ever worked with.

Q And honest?

A Absolutely.

Q You don't know Mr. Blum or Mr. Oberman, do you?

A I know Mr. Blum just to say hello to.

Mr. Oberman I met for the first time, he came up to the office prior to the trial and I was introduced to him for a second. Other than that I don't know him.

MR. ARKIN: I have no further questions.

Excuse me, I do have one further question, I am awfully sorry.

Q What about Mr. Sol Friend?

A I have known Mr. Friend over the years. I have dealt with him when he was in the legal department.

Mr. Friend is sincere, dedicated, I believe is as honest as could be and always tries to do the very best he could for the company.

MR. ARKIN: Thank you.

THE COURT: Mr. Fleming.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Perlmutter, you were shown and identified Government Exhibit 498 yesterday when Ms. Hynes was examining you.

Do you recall?

A Yes, sir.

Q You identified handwriting on the first page of 498 as Chester Carity's handwriting?

A Yes, sir.

Q Do you recall that?

A Yes, sir, I did.

Q Now, there is more than one -- there are actually four pages to this exhibit, is that correct?

A Yes, sir.

Q Now --

MR. FLEMING: May I, your Honor, read from this?

THE COURT: Yes.

MR. FLEMING: This is 493, which is a memo that was introduced yesterday.

Encircling the word commitments on the wrong page in Mr. Carity's handwriting.

Q That is Mr. [illegible]rity's handwriting?

A Yes, it is.

(Mr. Fleming read from Government Exhibit 398 in evidence to the jury)

Q Now, the next page of the same exhibit is a memorandum from Chester Carity to Larry Klingman, is that correct?

A Yes, sir.

Q That has to do with the same topic as the first page from which Ms. Hynes read, the newspaper?

A Yes, sir.

MR. FLEMING: Your Honor, I would like to read the second paragraph of the memorandum on the second page.

(Mr. Fleming read from Government Exhibit 398 in evidence to the jury)

Q It is all part of the same exhibit?

A Yes, sir.

MR. FLEMING: I have nothing further.

THE COURT: Redirect.

Pardon me, Mr. Weidner.

CROSS EXAMINATION

BY MR. WEIDNER:

Q Mr. Perlmutter, I am Jim Weidner and I represent Mr. Friend.

Do you remember testifying on your direct examination concerning an office procedure manual which you distributed to certain people?

A Yes, sir.

Q I show you what has been received in evidence as Exhibits 750, 749, 203-A and 203 (handing).

A Right.

Q These are all parts, are they not, of that manual that you spoke about?

A Yes, they are.

Q And these are parts of an office manual that relates to Rio Rancho Estates, correct?

A Yes, sir.

Q Did you, Mr. Perlmutter, maintain in your office, or do you, a master list which shows the distribution of that manual to various people in the country, that manual being the Rio Rancho office procedure manual?

A Yes, sir, I do.

MR. WEIDNER: I would ask to have this marked, please.

XXX (Defendant Solomon Friend Exhibit DC marked for identification.)

Q Mr. Perlmutter, I show you what has been marked as Defendant's DC for identification, and ask you if you can tell us what that is (handing).

MS. HYNES: Can we find out if he can identify it first before he starts describing it?

Q Can you identify this?

A This looks like a list that my secretary maintains.

Q Is this your secretary's handwriting?

A I believe so, yes.

Q And it contains various headings concerning various --

THE COURT: Have you seen it before?

THE WITNESS: No, sir.

THE COURT: All right.

THE WITNESS: This is maintained by my secretary. This is her handwriting.

Q This is your secretary's handwriting?

A Yes, sir.

Q Did you ask your secretary to maintain a list which shows where various pieces of materials were distributed?

A Yes.

Q And there is such a master list?

A Yes, she maintains that, yes.

MR. WEIDNER: I offer this in evidence.

MS. HYNES: I object, your Honor.

THE COURT: Sustained.

Q Mr. Perlmutter, let me show you Defendant's DC for Identification again, and ask you to look at the first column of this and see if that refreshes your recollection as to whether the Rio Rancho manual of office procedure was, in fact, distributed to Mr. Friend.

A According to this list, no.

MS. HYNES: Objection, objection, objection, your Honor.

THE COURT: No, no, no.

You are not being asked what that shows, because that is not in evidence.

You are being asked whether it refreshes your recollection as to whether the operations manual, Exhibit

203, was sent to Mr. Friend.

Q Mr. Perlmutter, yesterday or the day before, when you were asked about this, you thought that you had sent a copy of the Rio Rancho procedural manual to Mr. Friend.

A Yes, I said that, yes.

Q And does this exhibit refresh your recollection whether you did or did not send such a manual to Mr. Friend?

A No, it doesn't.

Q Did you actually hand carry the procedural manual to Mr. Friend?

I believe you also testified, did you not, that certain revisions --

THE COURT: Wait, wait, one question, one question at a time.

Q Did you actually hand carry the procedural manual to Mr. Friend?

A No, sir, I didn't hand carry it to anybody.

Q It was sent through office mail, is that correct?

A Yes, sir.

Q And would the same thing be true of revisions of the office manual which were made from time to time?

A Yes, sir.

Q I believe you testified that the copy which was sent to Mr. Friend was the legal department's copy, did you not?

A Yes, sir, I did.

Q Is it not also correct that various people in the legal department from time to time were assigned to deal with various problems in the company?

A Yes, sir.

Q Legal matters, is that correct?

A Yes, sir.

MR. WEIDNER: May I have marked as the next exhibit in order, please, these two documents as A and B.

Your Honor, may we approach the side bar?

THE COURT: Yes.

XXX (Defendant Solomon Friend Exhibits DD and DE, respectively, were marked for identification.)

(At the side bar.)

MR. WEIDNER: Your Honor, one of the two documents which I just marked for identification is a document which was handed to your Honor before the trial by Mr. Glendon, because at that point we intended perhaps to use it in the opening statement, and that document was held by your Honor to be privileged.

Before I make any further use of it at this point, I thought I should tell your Honor and, of course, I will abide by your Honor's ruling, but we would like to use that document at this point on the particular matter we are on.

MR. LAVINSKY: Your Honor, we press our objection.

THE COURT: I sustain it.

MR. WEIDNER: Your Honor, this particular question could cause, in my mind, a substantial prejudice to Mr. Friend, and I think --

THE COURT: This is the government's case.

MR. WEIDNER: I understand, your Honor.

THE COURT: To the extent that it is possible for you to try your case on the government's case, I have no objection. But you are not prejudiced if because of circumstances you are unable to try your case on the government's case.

MR. WEIDNER: Your Honor, to protect the record, may I move for a severance for Mr. Friend based upon --

THE COURT: Denied.

MR. WEIDNER: Your Honor, one further thing. May I use the document to try to refresh the witness' recollection?

THE COURT: I have no objection to that.

(In open court.)

CROSS EXAMINATION (Continued)

BY MR. WEIDNER:

Q Mr. Perlmutter, was one of the people in the legal department a Mr. Parkoff?

A Yes, sir.

Q And you dealt with him from time to time, did you not?

A Yes, I did.

Q In fact, didn't you testify that he and Mr. Arthur Mantel were two of the people you dealt with most regularly in the legal department?

A Yes, sir. Yes, sir.

Q I show you these two documents that have been marked as Defendant's DD for identification, and ask if this refreshes your recollection as to who in the legal department maintained and/or reviewed the manual of office procedure (handing).

MS. HYNES: Objection, your Honor. There is no question whether this witness needs his recollection refreshed as a result of that question.

MR. WEIDNER: I agree, your Honor.

Q Mr. Perlmutter, do you recall who it was in the legal department who was responsible for matters such as an office procedure manual?

MS. HYNES: Objection.

THE COURT: Overruled.

A It would either be Arthur Mantel or David Parkoff. They were the ones I dealt with mostly.

Q Do you recall which of those two it was?

A I think when Arthur Mantel was with the company it was probably him, and then Mr. Parkoff after that.

Q Not Mr. Friend?

A Not Mr. Friend personally, no, or individually.

Q I would like you to look at DD, and particularly the first page of DD, Mr. Perlmutter, and see if that refreshes your recollection as to whether the Rio Rancho office procedure manual was sent to the legal department and/or to Mr. Friend.

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

Wait. Split your question up. You have two questions there.

Q Would you look at that first page of that document and see if that refreshes your recollection as to whether the office procedure manual was sent to the legal department.

In particular, I direct your attention to what is numbered as paragraph 3 of that document.

A This is a memo from Mr. Parkoff --

THE COURT: Wait. Don't read it out loud.

THE WITNESS: I am sorry.

Q .Wait. The only question is, does that refresh your recollection as to whether the Rio Rancho procedural manual was sent to the legal department.

A I said it was sent to the legal department in the past, yes.

Q Was there, in fact, a procedure manual for other developments?

A Yes, it was.

Q One of which was called Silver Springs Shores?

A Yes, sir.

Q Is it not possible and, in fact, is it not the fact that you sent a procedure manual for that development to the legal department and not the Rio Rancho procedure manual?

A It would be uncommon, you know, not to -- what's the word? I can't get the word out. But it would be the normal procedure to send whatever manual it is, whatever development it is to the legal department.

Q Do you have a clear recollection as to which one it was that you sent to the legal department?

A At this point I can't be specific.

Q So are you telling me, then, when you testified on direct that you assumed that you had sent the Rio Rancho office procedure manual to Mr. Friend but, in fact, what you are telling us now is that it could have been the Silver Springs procedure manual, is that right?

A No, that's not what --

THE COURT: No, that is not right.

Q Mr. Perlmutter, you testified on direct and were asked about area directors meetings.

A Yes, sir.

Q How long were those area directors meetings, generally?

A You mean in time?

Q Yes. A day or two?

A Some may have been a day, some a half a day, some two days, depending.

Q And during those meetings, various people appeared, did they not, and gave talks on various subjects?

A Yes, they did.

Q Among the subjects covered were legal subjects, were they not?

A Yes, there were.

Q Various people from the legal department would attend from time to time and talk about legal subjects?

A Yes, sir. Yes, sir.

Q One of these would have been Mr. Friend, is that correct?

A Yes, sir.

Q To the best of your recollection, Mr. Friend attended perhaps two or three of those area directors meetings?

A A few. I don't know exactly how many.

Q And when he attended them, he would come in and speak on a specific subject and then leave, is that not correct?

A On some, yes.

Q Do you recall the subjects that he spoke on?

A Mostly if there were any changes in contracts or changes in federal regulations, things on that nature.

Q Legal requirements concerning the distribution of property reports?

A Could have been.

Q Rescission notices?

A Yes, sir, could have been.

Q Mr. Friend was adamant, was he not, that the property report was to be given to all customers at or about the time that they decided to purchase the property?

A He had said that, yes, sir.

Q On a number of occasions, isn't that correct?

A Yes, sir.

Q And was he not similarly adamant about the fact that there were to be no misrepresentations by salesmen of Rio Rancho?

A He always made that statement, yes.

Q In fact, what has been marked as Government Exhibit 1405, which is this memorandum of five points that salesmen were not to make, was a result of a conference which you had had with Mr. Friedman and Mr. Friend, is that not correct?

A A meeting with the two of them, yes.

Q And this memorandum specifically sets forth five major areas that were not to be said by salesmen, correct?

A Yes, sir, that's true.

Q You were also asked about prices --

MR. ARKIN: If your Honor please, there is some noise in the courtroom that we can control?

THE COURT: Yes. I think it is coming out of that lamp. I'm not sure.

MR. ARKIN: It can't be controlled.

Q You also were asked about price increases, Mr. Perlmutter, by the prosecutor, were you not?

A Yes, sir.

Q And you testified that once a determination had been made to raise prices, you would then contact the legal department?

A Yes, sir.

Q For certain matters?

A Yes, sir.

Q But by that time, the price increase had already been decided upon, correct?

A Yes, sir.

Q So when you contacted the legal department and Mr. Friend, it was after it had been determined?

A That was to have them do whateverthey had to do so we could implement the price increase.

Q In other words, certain things had to be done?

A Yes, sir.

Q Including, I think you testified, did you not, notifying state agencies for their approval?

A Yes, sir.

Q And if necessary, updating of offering statements?

A Yes, sir.

Q I show you what has been marked as Government Exhibit 527, and ask you if this isn't simply an example of your asking the legal department to do the necessary concerning price increases?

A This was an automatic memo that went to the various areas who had to do something to help implement the price increase, yes, sir.

Q And at a later date, am I correct, that Mr. Mantel was, again, the person who took over?

A Yes, sir, he was. He was -- in notifying the legal department, I used to directly send my notices to Arthur Mantel.

Q On price increases to get state approval?

A Yes, sir.

Q Similarly, you were shown Government Exhibit 681 yesterday, Mr. Perlmutter, what you may recall as a memorandum relating to a film that had been distributed (handing).

Would you look at that, please?

A Yes, sir.

Q And if I could look on it with you, in here, and speaking with -- this is Mr. Daniel Friedman's memo to you -- it states, "Could you please ask Jack--" who is Jack?

A Jack Friedman.

Q And who is he?

A Jack Friedman was in the legal department.

Q Then it says, "Could you please ask Jack and/or Sol Friend at what point we should be asking back for our films?"

A Right.

Q In essence, you are asking what your legal rights were under the contracts of the films, isn't that right?

A Well, we had -- there was -- AMREP had a contract with Piedmont which was being finished and we were asking here at what point is the contract completed so that whatever material belongs to us we can ask to get it back.

Q It was a legal question?

A Yes, sir.

Q Mr. Friend was general counsel for AMREP, was he not?

A Yes, he was.

Q He took on certain additional duties, I think you said, at one point in construction?

A Yes, sir.

Q But he retained his position of general counsel until late 1975, isn't that right?

A Yes, he did.

Q You have known Mr. Friend since he came with the company in approximately February 1970?

A Yes, I do.

Q Have you ever heard or seen Mr. Friend direct or suggest to anyone that they do anything except cut a perfectly square corner?

A Absolutely not.

Q No doubt about that?

A No doubt about it.

MR. WEIDNER: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. HYNES:

XXXX Q Mr. Perlmutter, the evening before you testified here on direct, did you speak with Mr. Arisohn of Mr. Arkin's office?

A Yes, I did.

Q How long did that meeting last?

MR. FLEMING: I object.

THE COURT: Overruled.

A About two hours.

Q Did you go over your testimony with Mr.Arisohn?

A Some of the -- some of the -- when you say the testimony, some of the questions he was going to ask me, you mean?

Q The questions that Mr. Arkin was going to ask you, did Mr. Arisohn go over those questions with you?

A Some of them.

Q Go over the answers with you?

A He asked me what the answers were, yes.

Q Provided you with some information?

A Yes, sir -- yes, ma'am.

Q Did you have personal knowledge of all of the information that Mr. Arisohn provided you with that evening?

A Yes, I did.

Q Prior to that?

A Yes, I did.

Q Do you recall being questioned by Mr. Arkin on submitting advertising to New York State?

A Yes, ma'am.

Q Did you have any personal dealings with New York State?

A No, no.

Q You yourself personally?

A No.

Q Never did.

Q Do you know who did?

A The legal department or the advertising department.

Q So you don't know if advertising that was submitted to New York State was approved by New York, do you?

A This is cross examination.

THE COURT: Thatisn't the question.

That was not the point that was brought out by the witness.

Objection sustained.

Q Do you recall Mr. Arkin asking you if New York State approved advertising?

A Yes.

Q You just testified that you had no personal dealings with New York State, is that correct?

A That's true.

Q You have no knowledge whether New York State approved, personal knowledge, whether New York State approved advertising, is that correct?

MR. ARKIN: Objection, your Honor.

THE COURT: I don't think this is the way to get at it, Ms. Hynes.

I will sustain the objection.

Q Mr. Perlmutter, on advertising that is used in New York State, it must be filed with New York State, is that correct?

A To my understanding, it must be filed and approved by -- that the copy is approved by New York State. That's my understanding.

Q Is there a New York State number given to a piece of advertising?

A Yes, an NYA number, yes.

Q And is there also a statement that is required by New York State to appear on every piece of advertising material?

A Yes.

Q And does that statement say that the filing with New York State does not constitute approval?

MR. ARKIN: Objection, if your Honor please. It is a misleading question.

THE COURT: Let's see what it says.

MR. ARKIN: Yes, yes, indeed, let's see what it says.

THE COURT: Why don't you read it out loud.

THE WITNESS: "A statement and offering

statement has been filed with the Department of State of the State of New York.

"The filing does not constitute approval of the sale or lease or offer for sale or lease by the Department of State or any officer thereof, or that the Department of State has in any way passed upon the merits of such offering.

"A copy of the offering statement is available upon request from the subsidiary," and it has an NYA number.

THE COURT: But that goes to the offering statement.

I thought you were talking about literature, Ms. Hynes.

MS. HYNES: I am talking about literature.

THE COURT: That, which you just showed him, went to an offering statement, not to literature.

Q Mr. Perlmutter, I am asking you whether you have personal knowledge of dealings with New York State when advertising is submitted to New York State?

A Personally I have never dealt with New York State.

Q So you have no personal knowledge whether New York State approved advertising as you used that term in court today?

MR. ARKIN: Objection.

THE COURT: Sustained.

You don't have to deal with them to know what it is.

What you just showed the witness had nothing to do with advertising.

Q Mr. Perlmutter, what was the basis of your answer to Mr. Arkin's question that New York State approves advertising? What were you basing that on?

A Knowing that an NYA number -- that New York State, any piece of material that we use in the State of New York had to have an NYA number, and in my understanding ofan NYA --

Q That to you means approval, is that it?

THE COURT: Let him finish it.

"And my understanding is" -- you interrupted him again. You do this constantly in the middle of the answer. Let him answer it.

A And my understanding of an NYA number is that New York State has reviewed and approved the literature for us to use it.

THE COURT: Now put your next question.

Q Is it your understanding that New York State is vouching for the accuracy of the statements made in that literature?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I have no way of knowing that.

Q Is it your understanding that New York State, in assigning an NYA number, is vouching for the fact that those facts, those statements made in there are true facts?

MR. FLEMING: Asked and answered, if your Honor please.

THE COURT: Sustained.

Q You said that there were other states other than New York State where advertising was filed, is that correct?

A Yes.

Q Was Ohio one of them?

A Yes, ma'am.

Q What is your understanding with respect to submitting advertising to Ohio?

A I don't know too much about it. I know New York. I know it was submitted -- it had to be submitted but I don't know anything about it.

Q Well, you answered Mr. Arkin's questions --

THE COURT: Not as far as Ohio. He asked

Florida, not Ohio.

Q Mr. Arkin asked you with respect to other states you had to submit advertising, is that correct?

A Yes, ma'am.

Q And he didn't list all of the other states, is that correct?

A No, ma'am.

Q But you know that you have to submit advertising to Ohio, is that correct?

A Ohio is one of the states, yes.

Q And what is your understanding with respect to submitting advertising to Ohio?

A Very little, just that it had to be submitted.

Q Did you think that by submitting it to Ohio Ohio was approving it?

A No. I had no way of knowing. I don't know that.

Q But you did think New York was approving it?

A Because of the NYA number that we had to have on the material, yes, ma'am.

THE COURT: I assume we are going to have some experts put on the stand who are going to tell us exactly what is meant, Ms. Hynes, so why waste time with this witness on it?

MS. HYNES: Because this is an important issue, your Honor.

I am going to offer Government Exhibit 513-E.

MR. ARKIN: Your Honor, we object on the grounds of relevance and outside the scope of the cross examination and it is hearsay in addition.

MS. HYNES: Your Honor, may I hand it up?

THE COURT: Let me see it.

(Handing to the Court)

THE COURT: Objection sustained.

Q You testified in response to questions by Mr. Arkin that you were aware of inspectors from various states visiting the property?

A Yes, ma'am.

Q Were you ever there when any inspector visited the property?

A No, ma'am. No, ma'am.

Q Do you know what criteria they used in their inspection of the property?

A No, I do not.

Q Do you have any information at all about what that inspection was of the property?

A No, ma'am.

Q Do you recall responding to a question by

Mr. Arkin stating that certain parts of the offering statement were required by law? Do you remember that?

A Something to that effect, yes.

Q What parts of the offering statement are required by law?

A I don't know which parts, but I know certain parts are standard legal talk.

Q Okay.

What are those certain parts?

THE COURT: He says he does not know.

A I don't know.

Q Well, you answered Mr. Arkin's question that you did know that certain parts --

THE COURT: Certain parts, but he didn't say he knew specifically which ones.

Q And you don't know specifically which ones?

A No, I don't.

nd

Q But do you know specifically that certain parts are, in fact, required or you don't have any knowledge of that at all?

MR. ARKIN: Objection.

THE COURT: As I understand his answer, it is that he knows that New York State requires that certain language appears in those reports.

What it is he doesn't know.

Q Is that your testimony?

THE COURT: That is what he said.

Q Certain language must appear?

A I believe to the best of my knowledge there is certain language that New York requires.

Q What is that based on? What is that based on?

A Probably past discussions with the people in the legal department.

Q Who?

A I can't be specific.

THE COURT: Go on to something else.

MS. HYNES: Your Honor, this witness has testified --

THE COURT: Ms. Hynes, I suggest you go on to something else.

Q You testified in response to Mr. Arkin's question that Mr. McGuinan was hired. Did you hired him?

A No, I did not.

Q Did you outline his responsibilities?

A No.

Q Did you tell him what to do?

A Absolutely not.

Q Do you know what he did do?

A I know what his function was.

Q How do you know what his function was?

A Because he was hired for that job.

Q Who told you that?

A It is in the personnel records of the company.

Q Did you check his personnel records before you came to court?

A Oh, no, absolutely not, but I know in working with AMREP -- I know pretty much what the functions of certain people are and his function was historian-librarian.

Q Historian and librarian?

A Research. He did the research I know on facts.

MR. FLEMING: Your Honor, all throughout Ms. Hynes' direct examination I understood her to be eliciting substantial hearsay evidence because of this man's position in the company. If she is taking the position now on her redirect examination that that is not proper foundation, I would like to make some motions addressed to the direct examination.

THE COURT: I will let it all in.

Q Mr. Perlmutter, were you aware that AMREP had been advised by various states that they did not have the facilities to investigate and determine if the statements contained in their advertising were true, correct and fully reflect existing facts?

A No, I did not.

Q Mr. Arkin referred to a portion of Exhibit 202, which is a training manual.

A Yes, ma'am.

Q That training manual you testified on direct examination was compiled in 1973, is that correct?

A Yes, I believe so.

Q Was that in the later part of 1973 to the best of your recollection?

A I believe so, yes.

Q And Mr. Arkin referred you to a portion of thatmanual which said to salesmen, don't oversell, is that correct?

A Yes, ma'am.

Q Do you recall that?

A Yes, ma'am.

Q Do you recall testifying on direct examination that there were no guidelines as to how much land could be sold to an individual?

A Yes, ma'am.

Q Were there guidelines in 1973 as to how much land could be sold to an individual?

MR. ARKIN: I object, if your Honor please. The question is misleading.

THE COURT: Sustained.

Q Do you recall that Mr. Arkin referred you to a portion of this training manual which came into existence in late '73 which advised managers, I take it, to go over the property reports with salesmen, is that correct? Do you recall that?

A Did it say "managers"? I know to go over it, review in training, yes.

Q Whoever was training the sales person was to go over line by line the property report?

A Yes.

Q So that they could understand it?

A Right.

Q Were salesmen trained to go over the property report and offering statement line by line with the customer prior to selling them the land?

MR. ARKIN: Objection. Outside the scope of cross, your Honor.

THE COURT: Overruled.

A I have no way of knowing that. I don't know.

Q You testified on cross examination by Mr. Arkin about various practices at dinner parties, property reports were on the table, varous practices, do you recall that?

A These are things that I know through my distribution, yes.

Q Through your distribution, what do you mean by that?

A When we distribute literature and offering statements and property reports and the folder, I know what the purpose of the folder was for and so forth.

Q Then you are assuming; you were not at those dinner parties, is that correct?

A No, I was not.

THE COURT: He didn't testify to that. His testimony on cross eas not that this is what was done at dinner parties because he was there. The testimony was that is what they were instructed to do, that is what he said.

Q Were you present when salesmen were instructed to put property reports on the table?

MR. FLEMING: I object.

THE COURT: Overruled.

A It came up in discussion I am sure at area directors meetings.

Q When?

A I don't know specifically. I remember statements that everything should be on the table.

Q How many sales dinners did you attend for Rio Rancho?

A Two.

Q Two?

A Yes, ma'am.

Q What years?

A I believe they were both in 1972.

Q Do you recall Mr. Arkin asking you that it was company policy not to represent that there is a resale market?

A Yes, ma'am.

Q You said it was company policy, correct, not to represent that there was a resale market?

A Yes, ma'am.

Q Is that because there is not a resale market for lots?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Was it company policy to tell customers that there was not a resale market for Rio Rancho lots?

MR. FLEMING: Objection based upon the pretrial order.

THE COURT: Sustained.

Q Who was Peter Miller?

A Peter Miller --

MR. ARKIN: Objection, your Honor. Outside the scope of cross.

THE COURT: Overruled.

A Peter Miller was co-manager of ATC with Len Geller.

Q Wasn't it common knowledge that Peter Miller said at sales dinners all of the time during the period of his employment with the company that the company would set up a resale division when the lots were sold out?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Are you aware, Mr. Perlmutter, that Mr. Miller made statements that there would be a resale division?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I became aware of it later on, much later. Maybe after he passed away I had heard about it.

Q When did he pass away?

A I believe in late '72 or early '73, somewhere around there.

Q But you learned at that time that he had been making those statements?

A Sometime after that I had heard it.

Q Peter Miller was never fired, was he?

A No, he died.

Q Before he died, he was never fired, was he?

A No, ma'am.

Q Did you train salesmen?

A Never. Only in administrative functions, yes.

Q You trained salesmen in administrative functions?

A Not salesmen, no. I am sorry, I didn't. Not salesmen; managers I did.

Q Do you recall Mr. Arkin asking you whether you trained salesmen about putting initials on contracts and you said yes?

MR. ARKIN: No, I never asked him.

A I think Mr. Arkin asked me about what was written in the manual.

MR. ARKIN: Objection, if your Honor please.

THE COURT: Overruled.

A I think Mr. Arkin asked me what were the instructions in the procedure manual that they used.

Q Do you recall Mr. Arkin asking you if you trained salesmen with respect to completing contracts and placing initials on the contracts next to a paragraph?

THE COURT: It was company policy that they should do it. That is what he testified to. Not that he trained salesmen.

The question asked by Mr. Arkin was, wasn't it company policy that, not that this witness trained salesmen.

Q What is the basis of your knowledge for company policy in connection with the salesmen having customers place initials on contracts?

A The procedure manual that I helped prepare, which was a company policy procedure manual, had instructions in it how to complete a contract and part of the instructions of completing a contract were to put the initials where necessary and based on that I would consider it company policy.

Q To put the initials where necessary?

A Yes, ma'am.

Q You talked in response to Mr. Arkin's questions about a contract pack, do you recall that?

A Yes, ma'am.

Q Can you describe that?

A I believe Mr. Arkin was referring to a contract pack at the local office at the time of sale.

Q That is correct.

A Because there are two contract packs. That is a package that is put together after the dinner is over and the sale has been completed, the legal material goes into this folder and whatever literature the salesman wants to use, at his discretion, goes into this folder so it is kept together plus the contract that is signed, a copy of the contract so it doesn't fall apart into individual pieces. It is just in one package and it is handed to the customer.

Q Is it pre-prepared or prepared after the sale is made?

A It is supposed to be after the sale is made.

Q After the sale is made material is put into a pack and then given to the customer?

A When a customer signs an offering statement, the back of it, it gets torn off, which goes with the contract. The rest of that property report or whatever it is plus the offering statement, plus the customers copy of the contract is put together in that pack together, as I said before, with whatever literature the salesman wants the customer to retain.

Q When was the tear-off receipt for the offering statement put in effect?

A I don't remember the date.

Q Was it late 1973?

A It must have been in '73 sometime.

Q Prior to late 1973 what was the procedure with respect to the contract pack?

A I believe it was the same.

Q This material was given to the customer after the signing of the contract?

A Yes, ma'am.

Q Do you recall Mr. Arkin asking you whether price increases were submitted to various states?

A Yes, ma'am.

Q Was the price increase that was submitted to New York State, was that a pro forma matter?

THE COURT: What do you mean by "pro forma"?

Q Did New York State ever refuse to allow a price increase?

MR. FLEMING: I object to that.

THE COURT: Sustained.

Q Do you recall Mr. Arkin asking you whether if a customer bought a lot in a certain period of time if he then wanted to exchange his lot for another undeveloped lot he would get the appreciated price?

A Yes, ma'am.

Q You testified on direct examination that every time there was a price increase there was an across-the-board price increase, is that correct?

A Yes, ma'am, that's right.

Q That also included all the lots in the building area, is that correct?

A Yes, ma'am.

Q So if the customer had a lot in Unit 21 and the price went up, a lot in the building area the price was going up all the time as well, is that correct?

A Right.

Q When a customer exchanged a lot, an undeveloped lot, and went into a building area, did the lot that he gave back to the company go back into the company inventory?

A Yes, it did to the best of my knowledge.

Q Was it resold?

A To the best of my knowledge it was, yes.

Q You said that from 1972 until 1975 outside builders were permitted to build at Rio Rancho, do you recall that testimony?

A No, I don't. I don't believe I said that. I believe 1972 to 1975 it may have been a prior question.

I think the question was asked of me about outside builders, if they can exchange. I would like to clarify it.

My knowledge is for the past year or so that I know of. I wasn't involved in that area prior.

Q You answered Mr. Arkin's question that from 1972 to 1975 outside builders could utilize the exchange privilege?

MR. ARKIN: If your Honor please, the question is argumentative and suggestive. Mr. Perlmutter is Ms. Hynes' witness.

THE COURT: Overruled. This was brought out by you on cross.

MR. ARKIN: I understand.

THE COURT: Well, put the question to him as to whether he testified to that effect.

Q Did you testify that from 1972 to 1975 outside builders were able to utilize an exchange privilege?

A I don't believe I testified to that. If I did, then I was in error because I don't know prior to -- what was done prior to a year ago. I wasn't involved with exchange or construction or outside builders in the early days.

Q So when you answered yes to Mr. Arkin's question that was in error?

A If that was the question.

THE COURT: He says if that was the question, then he did make an error, but he is not admitting it was the question. We will find out tomorrow whether it was or not.

Q You say that in the last year or so you have been involved in that and you do have some knowledge over the last year, is that correct?

A Yes, ma'am, the past eight months anyway.

Q Have there been basically two outside builders that have utilized the exchange privilege for building in Rio Rancho?

A Two principally. There may have been more.

Q Is one Jim Bradley?

A Yes.

Q Is he a former employee of the company?

A Yes, he was.

Q Is another one Mr. Douglas of Villa Corporation?

A Yes, ma'am.

Q Is he a former employee of the company?

A Yes, ma'am.

Q To your knowledge, have they picked up lots for exchange for about $500 and exchanged them in for the building area?

A I don't know what price. I know they picked up lots. I don't know what price.

Q Have they picked up these lots at auctions in Albuquerque?

A Yes, ma'am.

Q Do you know what the range of price that they paid for these lots that they are using to exchange in is?

A I don't recall. I never investigated to see what they were.

Q Didyou ever have any conversation with Mr. Jim Bradley about the exchanges into the building area?

A I had one conversation with Mr. Bradley, it must have been about eight months ago, I met him on the street at Rio Rancho and he had said to me that he would like to get more building lots for himself to build so I said that shouldn't be any problem, why don't you see the people involved. That was my entire conversation.

Q To whom were you referring him to?

A To the people that handle the allocations.

Q Isn't it common knowledge in the company that Mr. Bradley has been able to buy these lots for $500 and exchange them into the building area?

MR. ARKIN: Objection.

THE COURT: Sustained. He has already answered that question.

Q Were you aware that in or about 1972 or 1973 Mr. Bradley threatened a lawsuit if he wasn't allowed to exchange into the building area?

A I don't recall. Not to my knowledge.

Q Do you recall Mr. Arkin asking you about the fly and buy program from June 1974 until December of 1974?

A Yes, ma'am.

Q You stated that there were 142 buying units that went?

A Yes, ma'am.

Q Do you have personal knowledge that those are the correct figures?

A These are records that I kept in my office of that test program.

Q So in a six-month period you had 142 units and 69 bought, is that correct?

A 69 purchased land, yes.

Q Approximately how many units buy at a sales dinner in a six-month period, what do your records reflect on that?

MR. FLEMING: At a sales dinner?

A I don't have those statistics at my fingertips.

Q More, isn't it?

MR. FLEMING: I think it is apples and oranges. Is she talking about a single sales dinner?

THE COURT: I don't know what she's talking about.

MR. FLEMING: I object to the form of the question.

THE COURT: Sustained.

Q I am talking about a six-month period when Mr. Arkin said this fly and buy program was in effect and 142 units went down and 69 units bought, how does that compare to a six-month period when you are selling through sales dinners?

MR. FLEMING: I object.

THE COURT: You mean the percentage of closings at sales dinners?

Q The percentage of units that show and percentage of actual units that buy.

THE COURT: That's not the comparison. The comparison is the percentage of sales.

Q Mr. Perlmutter, in a six-month period in your dinner program.

A Yes.

THE COURT: You mean a comparable date, too?

Q In a comparable period of time.

THE COURT: I mean but this is 19 -- when was this program?

Q I will take the same period of time.

THE WITNESS: It was from the middle of '74 to the end of '74.

THE COURT: From the middle of '74 to the end of '74 did you have the same closing rates at your dinners as you testified you had on the fly and buy program?

THE WITNESS: I wish we did.

MS. HYNES: Your Honor, I am not talking about closing rates.

THE COURT: That's what this testimony was about.

Q You had 69 sales as a result of a fly and buy tour over a six-month period?

A Yes, ma'am.

Q And that was because you brought people down to the property and showed them the property before they bought it?

A Yes, ma'am.

MR. ARKIN: I really think, if your Honor please, we ought to perhaps clear this up at the side bar. These questions are not really --

THE COURT: So far she's trying to pose the question. She's entitled to do that.

Go ahead.

Q In the same six-month period from June 1974 to December of 1974, did you sell more than 69 units at sales dinners?

THE COURT: Objection sustained.

Next question.

Q Was the fly-buy program that went on from June until December discontinued because it wasn't successful?

A It was discontinued because of excessive administrative costs.

Q It wasn't profitable?

THE COURT: We have heard that two weeks ago.

Nothing new in that.

Q You talked about a rescission notice with Mr. Arkin and you stated that until sometime in 1972 unless a purchaser was going to use that land as its principal place of residence there was no rescission notice, is that correct?

A Yes, ma'am.

Q You testified on direct that the main inducement at the dinners that you attended was to buyers for financial investment, is that correct?

A That isn't correct. I wasn't asked that question.

Q During 1971 and 1972, 1970, during the period when you joined the company from '69 through '72, was the main inducement to buy this land as a financial investment at a sales dinner?

MR. FLEMING: I object.

THE COURT: Overruled.

A Are you asking me if I was asked this question?

Q No, I am asking you now.

A One of the resaons to purchase was financial investment, yes.

Q I am asking you whether it was the main inducement.

A It depends on the individual who is buying.

Q People were asked to check off whether they were going -- at the end of a sales dinner people were asked to check off whether they were going to use the lot that they were buying as their principal residence, is that correct?

A Yes, ma'am.

Q And prior to 1972, do you know what percentage of people checked off that they were going to use that lot as a principal residence?

MR. ARKIN: Objection, your Honor. At the side bar I can explain. It is a misleading question.

THE COURT: The witness has already said no. I will take the answer.

The objection is overruled.

Next question.

MS. HYNES: I didn't hear an answer.

THE COURT: He said no.

Didn't you say no?

THE WITNESS: Can I have the question repeated?

MS. HYNES: He didn't answer, your Judge.

Can I have the question read back, please?

(Record read.)

A I don't recall what percentage.

Q You testified that beginning sometime in -- when was it -- late in 1972 that a rescission notice was sent out to everyone, is that your testimony?

A Regardless of which box they signed.

Q That rescission notice was sent out from Albuquerque?

A Yes, ma'am.

Q Was that rescission notice included in a packet of promotional literature that was sent to a customer in 1972?

A It was included with the customer's approved signed contract, a welcome letter, a letter from the Panorama Inn telling them to come down for a discount, a luggage sticker, a New Mexico magazine. There might have been something else in there, but it was in a package, yes.

Q You testified something about 14 days with respect to the rescission notice. What was that?

A What I had said was that at a dinner reception when a person purchases, the contract the following day is reviewed in the local office. A phone call is made to the customer as we had gone through before to reemphasize what they bought and what the materials are and so forth.

The deposit is made of the check and the contract is then sent to Albuquerque to be processed.

The time, a day or two in the local office, a couple of days in the mail to Albuquerque, Albuquerque reviews it, Albuquerque processes it, Albuquerque signs it, Albuquerque puts together the pack for the customer and from that point of mailing they have an additional seven days so an estimate between the time it is written at a party until the customer sends it back could be that length of time.

Q When does a customer actually receive the rescission notice?

A He receives the rescission notice after it is approved in Albuquerque, it is mailed from Albuquerque.

Q So that the customer doesn't have in hand the rescission notice for 14 days, is that correct?

A No, I am saying from the time they purchased at the party they have that time to think about it.

Q Are they told about the rescission notice at the party?

A Yes, I don't remember what date, from sometime I think it was '73 on.

Q 1973 on they were told about the rescission notice?

A I think it was shown to them, yes.

Q You also made mention that if a customer did not receive the New York State offering statement he had 48 hours to cancel. Do you recall that?

A Something to that effect. That's a 48-hour state rescission where a customer can rescind within the 48 hours. It has nothing to do with the HUD, with the truth and lending. Where a customer if he calls the local office or writes the local office or goes up to the local office, if the contract hadn't been processed and the check hadn't been deposited they will give the customer back their check. If not, Albuquerque is notified on a cancellation form and the money should be returned to the customer.

Q I thought you testified in response to Mr. Arkin's question that if they hadn't received an offering statement they had 48 hours to cancel.

A I don't recall exactly. I know the 48 hours that the customer has. What the actual terms are I am not that familiar with.

Q How is a customer told about that 48 hours -- withdrawn.

Is the customer told about that 48 hours, is that company policy?

A It's on the contract I know. It's on the front of the contract.

Q You testified in answer to Mr. Arkin's questions about refunds, do you recall that testimony?

A Yes, ma'am.

Q Do you recall the testimony about gratuitous refunds?

A Yes, ma'am.

Q Do you recall testimony about refunds for hardship, financial hardship?

A I didn't pin any of thsoe down. I had said, if I remember correctly, that I received a print-out from Albuquerque on a weekly and monthly basis which has one of these subtitles. One of them is called gratuitous refunds and I see what was given.

Q Do you recall in response to a question by Mr. Arkin that it was company policy to give refunds for financial hardship?

A I don't recall that question.

Q Do you recall testifying that it was company policy to give refunds if there were health reasons?

A I didn't hear that question. To the best of my recollection.

Q Do you recall giving any testimony with respect to hardship refunds or refunds for health reasons?

A To the best of my knowledge, when that question was asked of me I had said I couldn't pinpoint anything whether it be health or whatever it happened to be. The only thing that I get is this computer print-out which gives me a total of gratuitous.

Q Isn't it a fact that you don't know about the refunds, if any, that are given by the company for hardship or health reasons?

A Other than the computer report that I get, yes.

Q The computer report simply says gratuitous refunds?

A Yes, ma'am.

Q Could that include refunds that are given as the result of a complaint to a state agency?

A No, there is a title for gratuitous legal.

Q Is it included under gratuitous refunds, if you know?

A Gratuitous refunds would be anything that the customer was given money back for other than legal or the visitation, just that for some reason or another we gave the customer back his money.

(Continued on next page.)

Q And is this the situation where if a complaint comes in or a refund is requested it goes to the manager if there is a local officer or it goes to Albuquerque if there is not a local office?

MR. ARKIN: If your Honor please, I object. She asked the question complaint. We are talking about gratuitous refund, not complaints.

THE COURT: Sustained.

We will have a recess.

MR. ARISOHN: Your Honor, at this time I would like to hand to the jury Defendant's CW, which was part of the procedure manual.

(Recess.)

(In open court; jury present.)

THE COURT: Go ahead, Ms. Hynes.

REDIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Perlmutter, you joined the company in May of 1969, I believe you testified?

A Yes, ma'am.

Q At that time, the property was 55,000 acres, is that correct?

MR. FLEMING: I object, your Honor.

THE COURT: I assume it is an introductory question.

Objection overruled. Answer it.

A I believe so. I'm not sure. I don't recall what it was.

Q Do you know how many homes were -- did you visit Rio Rancho shortly afger you became employed by the company?

A Yes, I did.

Q And do you recall how many homes were there at the time that you visited?

A At the time I visited? Roughly, 600 homes, something like that.

Q When did you visit?

A Maybe in May, maybe July.

Q Let me show you 146-T for identification, and ask you if that refreshes your recollection as to approximately how many homes there were in July of 1969 (handing).

A This is April of '69. IC says 315.

Q . So it was roughly in the neighborhood of 300 something homes?

A It might have been.

THE COURT: In April.

MS. HYNES: Pardon?

THE COURT: In April, he says.

MS. HYNES: Yes.

THE COURT: Your question was July.

Q In July of 1969, there were 315 homes, correct?

A In April of 1969.

Q I am sorry, in April of 1969, there were 315 homes?

A Right.

Q And you visited in July?

A Somewhere around there, right.

Q To the best of your recollection, were there 600 homes in July?

A I don't recall.

Q In any event, beginning in August of 1969 -- withdrawn.

The document that I have just shown you as Government Exhibit 146-T in evidence is a HUD property report dated April 28, 1969.

A Yes, ma'am.

Q It states that as of that date --

MR. ARKIN: Objection. It is not in evidence.

MS. HYNES: It is in evidence.

MR. ARKIN: Excuse me.

Q As of that date there were 315 homes?

A Yes, ma'am.

Q Beginning in August of 1969 until January of 1971, the company acquired additional acreage; you are aware of that?

A Yes.

Q 37,000 additional acres?

MR. FLEMING: I object.

THE COURT: What is the point of all this?

MS. HYNES: Your Honor, I am leading up to Mr. Arkin's --

THE COURT: Let's get into it.

MS. HYNES: Okay.

THE COURT: That is in the record already.

Q Mr. Arkin asked you or I believe you testified in response to questions by Mr. Arkin that you had conversations with various defendants in this case with respect to the development of Rio Rancho.

A Over the years, yes.

Q Which defendants did you have conversations with?

A Dan Friedman, Howard Friedman, Chester Carity.

Q Did you have any conversations with Mr. Solomon Friend?

A No, ma'am.

Q No?

A Not as far as development.

Q What were your conversations with Mr. Dan Friedman as far as development was concerned?

A They were all basically the same type general subjects, that we want to go ahead and build homes and advance the community as quickly as we could.

Q Were there any discussions as to when the entire property would be developed with any of these individuals?

A No, ma'am.

Q Never came up?

A No, ma'am.

Q Did you ever question when the entire property would be developed, all 910,000 acres?

A No, never questioned it.

Q In your opinion, when will all the 91,000 acres be developed?

MR. ARKIN: Objection.

THE COURT: Sustained

Q Approximately how many single-family homes are there at Rio Rancho today?

A I would say somewhere between 16 and 1700.

Q Is that roughly about 2 per cent of the lots at Rio Rancho?

A I didn't calculate it. I don't know, I really don't. If -- it's a percentage of it. I don't know exactly what the percentage is.

Q I show you Government Exhibit 1002 for identification, and ask you if that refreshes your recollection as to what percentage of the lots at Rio Rancho have been developed (handing).

A No, this does not refresh my recollection, as far as that goes.

Q Do you know how many lots have been platted out at Rio Rancho out of the 91,000 acres?

A Yes, this tells me how much was platted.

MR. ARKIN: Your Honor, the witness should be instructed to answer from his recollection, not from that.

THE COURT: Does that refresh your recollection as to how many lots were platted?

THE WITNESS: No, it doesn't refresh my recollection, no. I just read it here.

Q You just don't know, period, how many lots were platted, is that correct?

A I don't.

Q Do you recall Mr. Arkin questioning you about unit 7 and the area in unit 7 which was opened as an exchange area?

A Yes, ma'am.

Q I believe he mentioned it was approximately 54 and 55.

A Yes, ma'am.

Q Do you recall when that was opened?

A No, I don't.

Q How long has unit 7 been an exchange area?

A I can't answer that. I don't know.

Q Well, did you know that block 54 was offered for sale in 1970 --

A No, I don't.

Q -- beginning in 1970?

A No.

Q Did the company build two specific houses in unit 7 in approximately 1971?

A I really don't know.

Q Did those houses -- did the company have houses in unit 7 for several years that they couldn't sell?

A I really don't know.

Q You testified in response to Mr. Arkin's questions that these homes had been sold for $22,000.

A Yes, ma'am, whatever the prices are.

Q Well, did you know what the prices were when you answered Mr. Arkin's questions?

A Yes. I had researched it. Yes, ma'am.

Q What were the prices?

A I don't have it in my hand, but I had -- I had researched it and given it --

Q You had reviewed that with Mr. Arkin?

MR. ARKIN: Let him finish his answer.

THE COURT: Let him finish his answer.

A I had researched it and given those numbers, the numbers that were given to me, to Mr. Arisohn.

Q To Mr. Arisohn?

A Yes, ma'am.

Q And that was in the conversation you had in preparing your testimony here?

A Yes, ma'am.

Q Well, did you know the circumstances under which those houses were sold for 22,000, 23,000 and $26,000?

A No, ma'am.

Q Did you know that they were distress sales?

A No, ma'am.

MR. ARKIN: Objection.

THE COURT: Overruled.

She just asked and he said no. It doesn't mean that it's true because the question asks it.

Q Do you know how long those homes were unoccupied --

THE COURT: Pardone me. Maybe this is a good time to tell the jury that an assumption of a set of facts in the question does not mean they are true, unless the witness, under oath, affirms they are true.

I assumed the jury understood that, but this would be a good time to reiterate that.

Go ahead.

Q Mr. Perlmutter, you say as of today there are three homes in unit 7?

A There are three homes sold in unit 7 and there is one that has just been completed, a spec home, and another one under construction.

Q Are there paved roads in unit 7?

A No, there are not.

Q How many miles of dirt road do you have to go over before you get to unit 7?

A I don't think there are any.

Q Is it paved roads up to unit 7?

A Excuse me, I'm sorry, unit 7.

I don't know how many miles. I don't know the exact mileage.

Q Give us your best approximation, your best recollection.

A I would only be guessing and I don't want to guess.

Q Well, is it more than five miles?

A I think so.

Q Is it more than seven miles?

A I don't know.

Q But something more than five miles?

A I believe so.

Q And unit 7 is an exchange area?

A Yes, ma'am.

Q And unit 7 was the recommended exchange area since 1970, is that correct?

A I have no way of knowing. I don't know.

Q You testified that there were what you described as ranchette lots in unit 17?

A Yes, ma'am.

Q And that there were utilities in some of these ranchette lots?

A Yes, ma'am.

Q And that the lots that had utilities, were they company building area?

A Yes, ma'am.

Q Someone owning a ranchette outside of that company building area, can they exchange their ranchette for a ranchette with utilities in that building area?

A I don't know. That has not come up at all.

Q There is no exchange for a ranchette, is there, Mr. Perlmutter?

A No, there isn't.

Q So they couldn't exchange their ranchette?

A But we are exchanging certain lot value into this area.

Q Since when?

A Since we started this area.

Q Which was when?

A Well, it was on -- it was plans that were made which I was to implement which I started about eight, nine months ago, eight months ago.

Q Dering the period of time that you have had some responsibilities with construction, which I take it has been in the past few months --

A Past eight months or so, yes.

Q Have you seen any projections on when Rio Rancho will be entirely built?

A No, I have not.

MR. FLEMING: I object.

(Continued on next page.)

Q You testified in response to Mr. Arkin's questions that there were approximately 900 lots that were eithr ready to be built upon or beginning to be prepared to be built upon, is that correct, in the exchange area?

A Yes,ma'am.

Q Do you know how many lots there are in the exchange area?

A Per se, no.

Q Do you know how much land has been set aside in the exchange area?

A No, I do not.

Q Do you know whether there has been enough land set aside to enable every lot that has been sold to be exchange for a lot in the exchange area?

A I do not.

Q You do know that the exchange area is far smaller than the undeveloped portion of the property?

A The exchange area is a core area, a certain core area.

Q Yes. And that is much smaller than the remaining undeveloped portion of the property?

MR. ARKIN: Objection, your Honor.

THE COURT: I think there are other implications, are there not, as I understand the case?

gtjw 2

Perlmutter - redirect

Objection sustained.

MR. ARKIN: Thank you.

Q What percent of the land has been set aside for exchange areas?

A I don't know.

MR. FLEMING: Objection, your Honor.

MR. ARKIN: Objection.

THE COURT: He said he does not know.

Q Do you recall Mr. Arkin asking you about the various things that had gone up along Coors Road?

A Yes, ma'am.

Q Is Coors Road -- why don't you tell us where Coors Road is.

A Coors Road runs from Rio Grande Boulevard or from the highway up to 528, which goes into Rio Rancho.

Q Does Coors Road run along an area between Rio Rancho and a part of the City of Albuquerque?

A Yes.

Q You mentioned Taylor Ranch.

A Yes, ma'am.

Q What is Taylor Ranch?

A Taylor Ranch is a large development being prepared where they are selling many -- several builders are involved in the area selling homes to the Albuquerque market.

Q How large is Taylor Ranch?

A The exact size I don't know. It's quite large.

Q Well, is it more than 1,000 acres?

A I don't know.

Q When was Taylor Ranch put together?

A I would close to a year ago.

Q A year ago?

A Somewhere around there.

Q And was that purchased by some group of people?

A I believe so. I don't know who they are.

Q And is the land that was purchased as Taylor Ranch closer to the City of Albuquerque than Rio Rancho land?

A Yes, it is.

Q And how many houses are projected for Taylor Ranch?

A I don't know what is projected. You hear so many conflicting stories, I really don't know.

Q What about Paradise Hills, are you familiar with Paradise Hills?

A I know where it is, yes.

Q And is that close- to the City of Albuquerque than Rio Rancho Estates?

A Yes, it is.

Q Is that a large development?

A Yes, it is.

Q Is that approximately 8,000 acres?

A I wouldn't know. I wouldn't know the size.

Q Do you know how much land in Paradise Hills is available for development?

A No, I don't.

Q Did you get any literature from Paradise Hills?

A No. I don't recall any.

Q What about Volcano Cliffs?

A I -- I have never been in there, but I see it as I ride by Coors Road in the distance.

Q And is Volcano Cliffs another large development?

A I don't know how large it is. I have no idea. I know it's a development.

Q Is Volcano Cliffs closer to the City of Albuquerque than Rio Rancho?

A Yes, it is.

Q Is that a development for single family homes?

A I really don't know. I know it's a development.

I don't know what it is.

Q Is it a development for housing?

A I believe so.

Q Are all of the developments that I have just mentioned on the west side of the City of Albuquerque?

A Yes, ma'am.

Q And are all of those developments closer to the City of Albuquerque than Rio Rancho Estates?

A Yes, ma'am.

Q And in each of those developments that I have mentioned, there is substantial land available for housing, is that correct?

A There is land available, yes.

Q And there has been since your period of employment with the company, is that correct?

A Not in the Taylor Ranch. I don't know.

Q The Taylor Ranch was newly acquired?

A Yes.

Q Someone was able to go in there about a year ago and pick up more than 1,000 acres, isn't that correct?

A I don't know how many acres.

THE COURT: He said he didn't know how much. Don't put it in, Ms. Hynes.

gtjw 6 Perlmutter - redirect

Q Mr. Perlmutter, do you know how much land is available on the west side of Albuquerque for development which is closer into the City of Albuquerque than Rio Rancho Estates?

A I wouldn't have the faintest idea.

THE COURT: Ms. Hynes, I think you are going to get this from a witness better qualified than this witness.

He merely testified on cross examination as to what he saw as he drove down a road. That was the extent of his testimony.

MS. HYNES: Your Honor, as a corporate officer who has development responsibilities --

THE COURT: I am sorry, that was the extent of his testimony on cross examination and that is why you were allowed to ask questions about it, otherwise it is improper redirect.

MS. HYNES: Your Honor, I have no further questions.

THE COURT: All right.

MR. FLEMING: Just two or three, your Honor.

THE COURT: Make them short.

MR. FLEMING: Yes, Judge.

RECROSS EXAMINATION

XX

BY MR. FLEMING:

Q Taylor Ranch was purchased just a year or so ago?

A I don't know when it was purchased.

Q Recently?

A I've seen -- I've seen development going on there.

Q It is northwest of Albuquerque?

A Yes, sir.

Q People who bought it think they are going to make money?

THE COURT: Objection sustained.

You are excused.

Next witness.

MR. FLEMING: I have one other question, your Honor, if I might. I'm sorry if that was improper.

Q You were asked if you spent two hours with Mr. Arisohn.

A Yes.

Q Did you testify in the grand jury?

A Yes.

Q Before that did you spend time with Ms. Hynes or some other assistant United States attorney?

A Before now --

Q No, before you testified in the grand jury.

A Quite a few hours.

Q And now, of course, you were called as a prosecution witness in this case?

MS. HYNES: Your Honor, I object.

THE COURT: Overruled.

Q Did you spend any time with Ms. Hynes or any other Assistant United States attorney preparing for your testimony on direct examination?

A I did.

Q And can you estimate the number of hours you spent doing that or they spent doing that?

A Five or six different times, three or four is twenty -- I would say a minimum of 25 to 35 hours.

Q Did Mr. Arisohn or Mr. Arkin ever ask you to anything but tell the truth?

A No. sir.

MS. HYNES: Your Honor, I have on further questions.

REDIRECT EXAMINATION

XXX BY MS. HYNES:

Q After you spoke to representatives of the United States Attorney's office, you have testified that you then spoke to attorneys for the defendants, is that correct?

THE COURT: That is in the record already. That is nothing new.

Q Mr. Perlmutter, the two hour conversation that you had with Mr. Arisohn the evening before you testified here --

A Yes, ma'am.

Q -- was that the only conversation that you had with Mr. Arisohn?

THE COURT: Regarding what?

Q Regarding your testimony.

A No, it was not.

Q You have had other meetings with Mr. Arisohn?

A No meeting. I spoke to him on the phone once.

Q You have had other meetings with defense counsel, though, haven't you, Mr. Perlmutter, with respect to your testimony?

A After I -- after I visited with the U.S. Attorney, yes.

MS. HYNES: I have no further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT: Next witness.

gtjw 10

MR. DEVORKIN: The government calls Harriet James.

HARRIET JAMES, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mrs. James, where do you live?

A 616 Solar Road, Northwest Albuquerque, New Mexico.

Q And how long have you lived there?

A Three weeks.

Q Before you lived there, where did you live?

A 612 Val Verde Drive, Rio Rancho, New Mexico.

Q And when did you first move to Rio Rancho?

A In November of 1972.

Q What do you do for a living?

A I'm a bookkeeper.

Q How long have you been doing that?

A Seven years.

Q Do you have any family?

A Yes, I do, a husband and two daughters.

Q Originally, before you went to New Mexico, where did you live?

A Staten Island, New York.

Q What is your educational background?

THE COURT: Never should have left.

A High school and some college.

MR. FLEMING: We object.

THE COURT: Go ahead.

Q What is your educational background?

A High school and some college.

Q How old are you?

A Twenty-six.

Q How old is your husband?

A Twenty0six.

Q Did you ever work for Rio Rancho Estates?

A Yes, I did.

Q During what period of time?

A From eleven of '72 through eleven of '73.

Q In which department of Rio Rancho did you work?

A When I first went to work for Rio Rancho, I worked for the accounting department as an accounts receivable bookkeeper, then I went to work for account services.

Q What was your first contact -- I am sorry. Withdrawn.

Your work for Rio Rancho was out at Rio Rancho?

A Yes.

Q On the property?

A Yes, in their administration building.

Q When was your first contact with Rio Rancho Estates?

A At a dinner on Staten Island.

Q When was that?

A In October of '71.

Q You went there with your husband?

A Yes, we did.

Q Did you see a movie?

A Yes.

Q Hear a speaker's presentation?

A Yes.

Q Did you buy any property that night?

A Yes, we did.

Q What did you buy?

A Two half acre lots in Unit 22.

Q What was the approximate purchase price?

A $4150.

Q Did you make a down payment?

A Yes.

Q What was your reason for buying those two lots?

A As an investment.

MR. FLEMING: Is that the total price?

Q Were you thinking about moving at that time?

THE COURT: What?

MR. FLEMING: The testimony was two half acre lots and the price is $4150. Is that the total price for both lots?

THE WITNESS: Yes.

Q That is without interest, right?

A Right.

Q Were you thinking about moving out of New York at the time, also?

A Yes, we were.

Q Did you visit Rio Rancho after you bought those two lots?

A Yes.

Q When was the visit?

A In February of 1972.

Q Did you go alone or on a tour?

A We went on a tour.

Q Did your salesman take you out to see your property?

A Yes.

Q This was in Unit 22?

A Yes.

Q When you saw your property with your salesman, what, if anything, did you say to him and what did he say to you, if anything?

A Well, we told him that the property was awfully far from the developed area of Rio Rancho and he told us that Rio Rancho was growing at a rate that development would be getting towards our area within five to ten years.

Q Did you go back in the sales office?

A Yes.

Q What, if anything, did you do?

A We traded in a half acre of our property for a building lot.

Q You decided to move to Rio Rancho?

A Yes.

Q Did you go around the Rio Rancho community before you made that decision?

A Yes, we did.

Q Did you like what you saw?

A Yes.

Q When you traded -- you traded one of these lots?

A Right.

Q When you decided to trade in the lot and you told the Rio Rancho people that, what, if anything, were you offered in terms of a lot in exchange for yours?

A We were shown some areas of Panorama Heights, Corrales Heights and Unit 11.

Q When you saw Unit 11, describe what you saw when you got out there.

A Well, it was about four miles out from the rest of Rio Rancho. There was a long dirt road leading out to it. There were no lights.

The houses were just placed anywhere. There was no organization to the building in that area.

There were tumbleweeds growing all over and it just wasn't a pretty sight. The landscaping wasn't nice, it wasn't organized at all.

Q Did you look at Panorama Heights?

A Yes, we did.

Q That is on the golf course?

A Yes.

Q How much were the lots there being offered for sale?

A Anywhere from $10,000 up.

Q Which area did you decide to exchange into?

A Corrales Heights.

Q Did you look at any other areas besides Corrales Heights and Unit 11 and Panorama Heights?

A Yes, we looked at Unit 16.

Q Do you recall whether you were offered any other areas?

A I don't remember.

Q Now, just briefly describe Unit 16.

A It's an older developed area, the homes there were about twelve years old. They had over-ground utilities, telephone poles. Some of the houses had septic tanks and it was more developed than Unit 11, but it just wasn't as preplanned as neat a community as the other.

Q When you originally bought your property back in Staten Island, did the salesman say anything to you about utilities?

A He said there were underground utilities.

Q Do you recall him saying anything else about utilities?

THE COURT: Underground utilities in the two half acres you bought at the dinner?

THE WITNESS: No, in the developed area.

THE COURT: Oh.

Q Do you recall -- did he specify which units the underground utilities were in?

A No, he didn't.

Q You knew that your own two lots didn't have utilities?

A Right, we knew that.

Q When you exchanged your half acre lot for a lot in Corrales Heights, what were the nature of your financial arrangements with Rio Rancho?

A Well --

THE COURT: First, did she get a half acre for a half acre or a half for a quarter?

Q I will take it one at a time.

How large was the lot in Corrales Heights?

A A quarter acre.

Q What was the nature of -- financial nature of the transaction?

A Okay, we were to trade a half acre lot for a quarter acre lot in Corrales Heights. The half acre that we traded in we had paid -- the price was 2150 on this.

We had paid in about $500 on it. However, the lot in Corrales Heights was $5,000.

Q So, let's take it one step at a time.

A Okay.

Q You traded your half acre in that you paid about $500 in principal on, right?

A Right.

Q You owed a difference on that lot?

A Right.

Q Of about $1600?

A Yes.

Q Did you pay any additional money for the Corrales Heights lot?

A Yes, we did.

Q Approximately how much?

A The 16 plus close to an additional 2,000.

Q That was the difference between the price of your half acre lot and the price of the Corrales Heights lot?

A Yes.

Q Plus the money you still owed on your half acre?

A Yes.

Q What happened to your other half acre?

A We kept it as an investment.

Q What was your balance on that lot?

A $1800.

Q Approximately how much did your home cost you without the lot?

A $23,600.

Q Did you take a mortgage on the home?

A Yes.

THE COURT: Wait. You took a mortgage on the home and the lot?

Q Did the mortgage cover the lot and the home?

A No.

THE COURT: Just on the home.

THE WITNESS: Yes, we paid for the lot.

THE COURT: You learn something every day.

Q When you bought your lots back in Staten Island, did you know what the size of the lots in Corrales Heights were?

A Yes.

Q Which was what?

A A quarter acre.

Q You knew they were quarter acre in Corrales Heights?

A Yes.

Q Did anybody say to you in Staten Island that you would have to pay more money for a Corrales Heights lot?

A No.

Q After you made these arrangements, that was in March or February, I take it, right?

A Yes.

Q You moved out there in November?

A Yes.

Q Did you go to any other dinners after you came back to New York?

A Yes, we did.

Q About how many?

A About two or three.

Q Did you bring any members of your family?

A Yes.

Q Did they buy any property?

A Yes.

Q Which members of your family bought property?

A My father-in-law, my brother-in-law and my husband's grandmother.

Q Your husband's grandmother?

A Yes.

Q How many acres or how many lots did your brother-in-law buy?

A One half acre lot.

Q For what purpose?

A Investment.

MR. FLEMING: I object to that.

THE COURT: Sustained.

MR. FLEMING: May I have it stricken, your Honor?

THE COURT: Stricken.

She cannot testify as to why other people bought it.

Q Did you say anything to him about why he should buy the lot?

MR. DEVORKIN: Did she say anything?

THE COURT: Come on. That doesn't prove what the answer was.

Q How many lots or acres did your father-in-law buy?

A One acre.

Q Two lots?

A Yes.

Q How many acres or lots did your grandmother buy?

A One half acre lot.

Q How old is your husband's grandmother?

A Sixty-six.

Q She lives in New York?

A Yes.

Q Does she own property in New York?

A Yes.

Q Do you know whether she had any plans to move to New Mexico?

MR. FLEMING: I object.

THE COURT: Sustained.

Q Before you bought your house out there at Rio Rancho, did you price any other homes or areas of the city?

A No, we did not.

Q Why not?

A Well, when we were down on the tour, Rio Rancho had a preplanned bus tour for us. We were shown Four Hills, a very exclusive area of Albuquerque where the homes ranged $50,000 up, where homes had goldplated doors.

We were also shown the Rio Grande area where homes go up to a quarter of a million dollars.

We were also shown the urban renewal areas of Albuquerque, which were just slums, which were being torn down and rebuilt and the impression that we were given by the end of the tour is that the only decent place, the only place for an average income family is in Rio Rancho.

Q Did anybody on the tour show you Academy Acres?

A No.

Q Any property in the Northeast Heights?

A No.

Q Paradise Hills?

A No.

Q After you bought your home and moved to Rio Rancho, did you develop friends in the Albuquerque area?

A Yes, we did.

Q Did you have occasion to drive around the Albuquerque area?

A Yes.

Q Did you ever look at homes or lots for sale in the Albuquerque area?

A Yes.

Q Aside from Rio Rancho?

A Yes.

Q Did you see any properties with homes for sale?

A Yes.

Q Where were those properties?

A Academy Acres, which is in the Northeast Heights, Shadow Hills, in the Northeast Heights. Vera Canyon in the Northeast Heights among many others.

Q Did you make any inquiries about the prices asked for those properties?

A Yes, we did.

Q Were there homes on those properties?

A Yes.

Q Did you make any comparison between the prices on those homes and the prices on the homes at Rio Rancho?

A Yes.

Q What was the comparison that you found?

A In very many cases the prices were a lot less for comparable homes.

Q You say you went to work for Rio Rancho at about the same time you moved there?

A Right.

Q Your first job was in accounts receivable?

A Yes.

Q What exactly did you do in the accounts receivable department?

A I handled checks coming in, payments on accounts and wrote up the reports and deposited them.

Q How long did you stay in accounts receivable?

A About two months.

Q And then where did you go?

A I went to account services.

Q Who was your supervisor in accounts services?

A Glen Allingham.

Q Who did Mr. Allingham report to ?

A Bob Whalen.

Q What was Mr. Whalen's title or position, if you recall?

A He was head of account services.

Q When you first came to Rio Rancho to work, was there an account services department?

A No.

Q Was there a woman named Maryann Newman working there?

A Yes.

Q What was her function?

A She was head of customer relations.

Q How many people did she have working for her?

A Three people.

Q When you went in to account services, how large was account services?

A We had twenty people.

Q Did account services start when you went to work for account services as a department?

A Yes.

Q What was the general function of the account services department?

A We handled complaints, inquiries and any problems that the customer might have on their account right along with public relations.

Q Did anybody explain to you -- withdrawn.

Did anybody at Rio Rancho explain to you why the account services department was started?

A Yes, because --

Q Who explained this to you?

A Glen Allingham.

Q What did he say?

MR. FLEMING: I object.

THE COURT: Sustained.

Q Who was Mr. Allingham?

A My supervisor.

Q He was the head of account services?

A Yes.

Q What did he say to you about the reason it was started?

MR. FLEMING: I object.

THE COURT: Overruled.

A Because customer relations was not able to handle the amount of complaints and inquiries coming in about the property.

Q When you first started in account services, were there letters of complaint sitting around?

A Yes.

Q Describe what you saw when you started.

A There were --

MR. FLEMING: I object.

THE COURT: She is testifying of her own knowledge.

MR. FLEMING: My point is that it is hearsay. That is my objection. It was a letter.

THE COURT: I will let it in.

Objection overruled.

Q What did you see physically when you started?

A Hundreds of letters with complaints and questions and such piled up.

Q Those were letters that were dated some months --

THE COURT: Wait. Complaints and questions?

THE WITNESS: Yes.

THE COURT: Did you read them all?

THE WITNESS: We went through them, yes. That was our job.

THE COURT: All right.

Q Now, when you say complaints, let's define that.

What do you mean by complaint?

A I had letters from many people saying, I am not able to sell my property. I would like my money back. Where can I sell this property? I don't know what to do with it. My salesman told me that I would make money on my investment in five to ten years. Why isn't this so? I want my money.

dt

Q When you say requests for information, what do you mean by that?

A People wanting to know the current selling price of the property, asking questions about Rio Rancho and its development.

Q Did people write in asking about how they would go about reselling their property?

A Yes.

Q Restricting yourself just to the kinds of items you called complaints, how many complaints a day did you personally handle?

A I would get three or four a day just myself, complaints.

Q How many other people were there in the department who were doing what you were doing?

A 19.

Q How was the work in the department divided up?

A The accounts were equally divided among all of the girls in account services.

Q So you each had about the same number of accounts?

A Right.

Q Approximately what percentage of the complaints had to do with resale of the property?

A About 75 per cent of them.

Q Generally speaking, what would those say?

MR. FLEMING: I would like specifics.

THE COURT: Not generally speaking.

Q Give us some specific examples of what those resale complaints would say.

MR. FLEMING: I would like to know how many.

Q What would they say?

THE COURT: How many? Did you have one, ten?

Q Three or four a day?

A Yes.

THE COURT: Regarding resale?

THE WITNESS: Yes.

THE COURT: Three or four a day.

Q For the whole time you worked there?

A Yes.

Q The other women in the department were doing the same kind of work you were?

A Right.

Q What did the specific complaints that you saw about resale say?

A I would get a letter saying, I purchased this property ten years ago and I am ready to sell it and the salesman told me that you would have a resale program and I would like for you to sell this property for me.

Q Now, when you were working in account services, did you have occasion to go into actual account files?

A Yes.

Q How were those files kept?

A On microfilm.

Q What were the procedures for keeping letters that came in from customers?

A At the end of each day we put them in a box to be microfilmed so we would have them for further reference.

Q Were letters from customers on microfilm?

A Yes.

Q Were you given instructions about doing that?

A Yes.

Q By whom?

A Mr. Allingham.

Q Was it your regular practice to do that?

A Yes.

Q Did you regularly find such letters on microfilm in the files?

A Yes.

Q Were there any instructions about what to do with Rio Rancho responses to such letters?

A They were also put on microfilm.

Q Was it your regular practice to do that?

A Yes.

Q Did the microfilms that you saw regularly have those responses?

A Yes.

Q Were there occasions when you wrote internal memos from yourself to another employee in the department?

A Yes.

Q Or your superior?

A Yes.

Q What, if anything, was done to retain those memos?

A They were also put on microfilm.

Q For the particular account?

A Yes.

Q Was it the regular practice to do that?

A Yes.

Q Were you given instructions to do that?

A Yes.

Q Did you regularly see internal memos or the microfilms in the files of customers?

A Yes.

Q When you went into the microfilmed files, did you happen to see letters in those files that predated your coming to the company?

A Yes.

Q Did you find letters in the files that predated your arrival like the resale complaint letter you have described?

A Yes.

Q Do you recall how far back you saw letters like that?

A '62, '63.

Q Did the account service department ever hold meetings to go over what responses should be sent out to customers' letters?

A Yes.

Q How frequently would the meetings be held?

A Once or twice a month.

Q Who ran the meetings?

A Mr. Allingham;sometimes Mr. Whalen.

Q Who attended the meetings?

A All of the girls in account services.

Q What would you do at these meetings?

A We would discuss problems.

Q Such as?

A Resale, current selling price.

Q When you say discuss problems, explain to the jury what you mean.

A People would write in with problems on selling their property and wanted to know what they could do about selling it and we would have the meetings to discuss how we would tell them how to sell their property.

Q Did you develop responses to these?

A Yes, we did.

Q Were these form responses?

A Yes.

Q Were you given instructions about using the form responses?

A Yes.

Q What was the form response when you worked at the company if somebody wrote in and said -- excuse me -- somebody wrote in and complained about inability to resell?

A We had a little line that said, which we called the "usual on resale" which said, "We are sorry at this time we have no resale program. However, you might try selling your property through a local realtor, through a newspaper or to a friend."

Q What if somebody wrote in just asking about how to go about reselling?

A We would tell them the same thing. The usual on resale.

Q That was the title given to that kind of response?

A Yes.

Q Did the response also include something about the investment value of Rio Rancho lots?

A We would give them the usual on resale also for that.

Q What I mean is did your response to the customer, the form response, also include something about the investment value of Rio Rancho lots?

MR. FLEMING: The letter is in evidence, your Honor.

THE COURT: We have a letter around.

MR. DEVORKIN: I will introduce it.

THE COURT: Show it to her now.

Q Before I do that, Mrs. James, was there a response -- withdrawn.

You say you got requests for current information about values of property?

A Right.

Q Was there a form response for that?

A Yes.

Q What was the form response for that?

A We were told specifically to say that we, Rio Rancho, are selling a certain piece of property in a certain unit for this amount.

Q Who told you to say that?

A Mr. Allingham.

Q Did he tell you why?

A He said that --

MR. FLEMING: I object to that.

THE COURT: Mr. Allingham is the same fellow who was her boss, head of this section?

THE WITNESS: Yes.

THE COURT: I will let the testimony in.

A He told us that the customer might not be able to get the same amount that Rio Rancho was selling the property for. Therefore, we should not tell them that they would be able to get the same amount.

Q Were you permitted to refer customers to local brokers in Albuquerque?

A No.

Q Did you receive any instructions about that when you worked there?

A Yes.

Q What were those instructions?

A We were told not to refer customers to any brokers.

Q Let me show you what has been marked Government's Exhibit 346-T for identification. Can you identify that?

A Yes.

Q Is that your signature?

A Yes.

Q Do you know whether you sent that particular letter out?

A I signed it, but I don't remember the specific case.

Q This specific letter?

A Right.

Q If you signed it, would the letter have been sent out in the normal course of business?

A Yes.

MR. DEVORKIN: I offer 346-T.

THE COURT: You say that's your signature?

THE WITNESS: Yes.

MR. ARKIN: No objection.

XXX (Government Exhibit 346-T received in evidence.)

Q Mrs. James, did form responses change from time to time?

A Yes.

Q If somebody had written a number of complaints, did you shorten the response on occasion?

A Yes.

THE COURT: Wait a second, that letter doesn't seem to be in response to a complaint.

MR. DEVORKIN: I am not referring to this specific letter yet, your Honor.

Q Directing your attention to 346-T --

THE COURT: Which has nothing to do with a complaint.

MR. DEVORKIN: I am going to explore it now.

Q The third paragraph, what kind of customer letter was that paragraph used for, if anything?

MR. FLEMING: If your Honor please, the witness has testified that she signed it but has no recollection of writing it so I don't see how it can be explored.

THE COURT: He is trying to find out whether that is a form letter and what were the directions for using that form.

Go ahead.

Q In that third paragraph, is that third paragraph a paragraph you used frequently?

A Yes.

Q That was part of the form response?

A Right.

Q I take it you had some discretion on responses, correct?

A Right.

Q And what kind of customer letter did you use paragraph 3 for?

A A customer who wanted to sell his property and asked what we were selling property for.

Q Did you also use it if he asked the value of his property?

A Yes, we would.

MR. DEVORKIN: May I read 346-T, your Honor?

THE COURT: That doesn't prove that came in response to a complaint.

MR. DEVORKIN: I agree, your Honor.

Q Was it usual practice to use a paragraph like paragraph 3 in response to those kinds of customer letters?

A Yes.

THE COURT: All right.

MR. FLEMING: May I ask a question voir dire on this document?

MR. DEVORKIN: It is already in evidence, your Honor.

THE COURT: I gather Mr. Fleming would like to ask a question on the voir dire. Do you object?

MR. DEVORKIN: No.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q These are ordinary responses to letters which ask if Rio Rancho can resll the property for the customer, is that right?

A Yes.

Q Or ask what the price of comparable property is?

A Yes.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Or ask what the value of their property is?

A Right.

(Mr. Devorkin read from Government Exhibit 346-T in evidence to the jury.)

Q This map that is attached is a portion of a particular unit?

A Right.

Q It is not of the entire unit?

A No.

Q Or of the entire property?

A No.

Q Showing you Government's Exhibit 645 for identification, have you ever seen that letter or a letter like it?

A Yes.

Q That letter was dated sometime in 1971, correct?

A Yes.

Q That was before your employment?

A Right.

Q Where did you see a letter like that before?

A In the files. On the microfilm.

Q In a customer's file?

A Yes.

Q Not that particular customer, right?

A No.

Q Have you had a chance to read this letter through carefully before testifying today?

A Yes.

Q And is that similar to letters in Rio Rancho account files?

A Yes, it is a form letter.

Q What was that form letter used -- withdrawn.

Was that form letter used at any time while you were with the company?

A No, we set up our own form letters.

Q But it was in account files?

A Yes.

Q Could you determine what kind of customer letter that form letter was in response to?

A Yes, the customer decided not to keep his property and this letter was asking him to reconsider his purchase and giving him a progress report on Rio Rancho.

MR. DEVORKIN: I offer 645.

MR. ARKIN: No objection.

XXX (Government Exhibit 645 received in evidence.)

THE COURT: We will suspend and resume tomorrow morning at 10:00.

(Whereupon, an adjournment was taken to Friday, December 3, 1976, at 10:00 a.m.)

***

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Lawrence Perlmutter (Resumed)	3391	3399	3507 3561	3560
Harriet James	3563			

EXHIBIT INDEX

Government	Identification	In Evidence
833		3393
Defendants Howard Friedman and Henry Hoffman		
CS		3402
CT	3411	3416
CU	3417	3418
CV		3421
CW,CX		3423
CW	3424	3425
DA	3441	3441
DB		3476,3477

EOjw 1

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 3, 1976
10:00 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning.

I hear there is an application.

MS. HYNES: Your Honor, with respect to the instruction by the Court to file a brief by Monday, as we advised your Honor just before the Thanksgiving recess, the reason why the government made the application not to sit on Friday after Thanksgiving was that out of town witnesses were going to be put on the stand.

We have been putting with the exception of Mr.Perlmutter out of town witnesses.

Witnesses have been scheduled to come in over this weekend. We cannot reschedule them. They are scheduled to go on next week and we are having difficulty in having enough time to talk to these witnesses plus being able to complete the brief by Monday.

Our application is an adjournment to file the brief a week from Monday.

THE COURT: Not granted. It should have been filed with the original trial brief.

I indicated there was a piece missing to that trial brief. This should have been done, I am sure it is in your files for months, it has to be. You couldn't have gone to trial without it.

MS. HYNES: We don't do a trial brief for ourselves on the defendants the way your Honor has outlined it. We have been working seven days a week putting witnesses on the stand.

THE COURT: You are missing the whole point, Ms. Hynes. I was told last summer I was getting it. I fixed the time in September for the brief. You got it to me. It wasn't complete.

It is perfectly obvious from the reasons you have given that you don't want to give it to me.

MS. HYNES: Your Honor, we are going to try to get you a brief. We did not tell you last summer that we were going to give you the type of brief you outlined for us.

THE COURT: You said a trial brief.

MS. HYNES: We did.

THE COURT: I am saying there is a piece missing.

MS. HYNES: Your Honor, you keep saying on the record that we promised that last summer. I want to correct the record that we did not promise last summer.

THE COURT: You said a trial brief.

MS. HYNES: And we did.

THE COURT: You did not give me a trial brief. There was a piece missing, I keep saying that, and the piece missing for a trial brief how the evidence ties these defendants in. That is part of a trial brief.

A fundamental part of it. The whole point of a trial brief is to show how the defendants are guilty.

It is perfectly clear from what you said on the record several times now you do not want to give it even though I keep telling you are going to give it and you are going to give it to the defendants and you said that again last week.

First you said you were very busy with witnesses and I pointed out this was due in the original brief. I also pointed out I don't see how you could have been preparing this case without that information at your fingertips and the basis for it.

Then you came back and said the office has never done this before which indicates you have got a steady view in your mind you are not going to give it. I say you are going to give it and I want it Monday.

It is too late to come in now saying you are busy on Friday.

About these photographs, has the government arranged to have the photograph of 1967 and 1975 be at the same scale either by blowing up or reducing?

MR. DEVORKIN: I have arranged for all three years to be at the same scale. The photographs were taken back to the laboratory in Long Island yesterday.

Mr. Woodward informs me that it will take about two days to complete the process. They will be working all day tomorrow and I expect that they will be done the first thing Monday morning.

THE COURT: All right.

MR. DEVORKIN: To use them Monday.

THE COURT: As long as they are the same. It is perfectly obvious that a photograph, they say a picture is worth a thousand words. All the testimony that comes off the stand isn't going to have much impact on the jurors when they look at a photograph. They will make up their minds from the photograph and I am sure that is why you are using it and you are entitled to use it for that reason. I don't want any adjustments that have to be made so that the jurors in their mind have to change their focus of their eyes from one picture to another.

Secondly, the blowup of the 1975 pictures proves the point. If you look at that blowup against the original, you are not going to think you are looking at the same picture. It doesn't have the same impact.

If you make them on the same scale and have a comparison, that is what comparison means, a comparison is based on basics which are the same for each of either years or pictures or whatever else you are comparing, then they would be admissible.

Their weight, of course. is something else. The question of the type of equipment used, the weather and so forth will be things that you will have to give to the defendants because they are entitled to use that on cross examination to attack the credibility of the witness.

MR. DEVORKIN: With respect to that, your Honor, I can work this out with counsel, I would like to have that evidence in the record as to the cameras and so forth and I would try to work out a stipulation with counsel.

d tla

THE COURT: On the other hand, they may not want it so you don't need to put it in the record and burden the record. In other words, if you can give counsel the information so they know what it is, they may not want to use it in front of the jury on cross examination. They may or may not, but maybe we can save some time on that.

MR. DEVORKIN: If they are going to use it on cross examination, I would like to have the full information in the record, that's all I am saying.

THE COURT: Of course if they are going to use it on cross examination, you would want to use it also or portions of it, I gather.

I would like to avoid, if possible, the technical material going before the jury unless it is absolutely necessary. It is just filling the record unless counsel feels they need it.

Is Mrs. James here?

MR. KAUFMAN: Yes, she is, your Honor.

One other matter. With respect to the witness from the telephone company, Raymond Seay, defense counsel informed your Honor yesterday that they had not received certain items that they subpoenaed and they still have not as of this morning. As we informed your Honor, he was about the fourth or fifth witness down the line. He would be -- today's order would be Mrs. James, two other witnesses and then Mr. Seay. That would be the fourth witness down the line.

It may be that we would be getting to Mr. Seay before 5:00 today. I am just inquiring of defense counsel whether or not they want us to go ahead if we are ready to put Mr. Seay on before 5.

THE COURT: I gather you were to talk with defense counsel to see if you could furnish them with the information they were seeking.

MR. KAUFMAN: That's right. We do not have everything that they are seeking from the telephone company and they evidently want everything that they are seeking from the telephone company.

THE COURT: I gather you asked the telephone company, Mrs. Thompson, on Wednesday to ship another set of materials to you?

MRS. THOMPSON: Yes. It is supposed to arrive tonight.

THE COURT: Why don't we do this, let's go and we will go through the direct and if you finish your direct before 5:00, we will adjourn to Monday morning. That will give them time to have their materials prepared

eojb 3

for cross examination. Is that right, Mr. Arkin?

MR. ARKIN: Your Honor, assuming that Ms. Thompson's predictions of the material are accurate and we receive them tonight, that would be suitable to cross first thing Monday morning. I am informed by Ms. Cross who is in Albuquerque now that it is supposed to be in the mail. As your Honor knows, that is one of the three greatest misrepresentations known to mankind.

I won't recount the other two.

I hope it will be here tonight and we will also check on Saturday in the mails and I will also call Ms. Cross again in the event she has not left Albuquerque.

THE COURT: All I can say is that he will have to wait for cross examination until defendants have the material.

I see no objection to putting him on today and getting his direct in on the hope that counsel has the material tonight or tomorrow morning. Tomorrow morning they will also have the daily transcript with which to work and they can cross examine Monday.

If they come in Monday morning and say they still haven't received the material, I think we will just have to adjourn his cross examination until they get it. I don't know how else to do it. Do you have another suggestion, Mr. Kaufman?

MR. KAUFMAN: I don't have --

THE COURT: Aside from adjourning at lunch time.

MR. KAUFMAN: I don't think it will be that early. I think what we are talking about is three or 4:00.

If it's on in the afternoon, I think the government would prefer that the witness be examined all at the same time with cross following direct. If it is that we are done at lunch time, then maybe we don't want to wait.

THE COURT: What I am saying is the only alternative is not to put him on at all today and to make sure that the defendants have their material.

MR. KAUFMAN: That would be the government's preference especially if we are on into the afternoon and we wouldn't be losing more than an hour or so of trial time.

THE COURT: We can start at 9:30 next week to make up for it.

MR. KAUFMAN: Fine.

THE COURT: All right, let's see how we stand. Bring the jury in.

(Jury present.)

XXX HARRIET JAMES, resumed.

THE COURT: You may proceed.

MR. DEVORKIN: Thank you, your Honor.

Your Honor, may I read 645 to the jury?

THE COURT: You may.

(Mr. Devorkin read from Government Exhibit 645 in evidence to the jury.)

XXX DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mrs. James, let me show you Government Exhibit 645 for identification and ask if you have ever seen a letter like that before.

A Yes.

Q Where have you seen it before?

A In the files.

Q Customer files at Rio Rancho?

A Yes.

Q What is the date of that letter?

A August 22, 1969.

Q Have you seen letters like that with similar dates at the same time period?

A Yes.

MR. DEVORKIN: I offer 652.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mrs. James, you say -- what was your position at Rio Rancho when you saw all these letters?

A An account representative.

Q Was Lillian Goldfine one of your accounts?

A Could I see the account number?

Q Sure.

A No. I can't say I saw this specific letter in the file. However, I had seen form letters exactly like this one in the files.

MR. FLEMING: No objection.

XXX (Government Exhibit 652 received in evidence.)

MR. DEVORKIN: May I read just a small portion, your Honor?

THE COURT: Yes. From now on I don't want any reading of two-page letters. The jury can do that on a recess. I don't mind your reading a sentence or two.

MR. DEVORKIN: All right.

(Mr. Devorkin read from Government Exhibit 652 in evidence to the jury.)

(Continued on next page.)

T2A.AM

BY MR. DEVORKIN:

Q The rest of this letter is a progress report on Rio Rancho, Mrs. James?

A Yes.

Q Showing you Government Exhibit 655 for identification, have you seen a letter like that anywhere before (handing)?

A Yes.

Q Where?

A Also in the files.

Q That letter is dated when?

A October 3, 1968.

Q That is the account files at Rio Rancho?

A Yes.

MR. DEVORKIN: I offer 655.

MR. ARKIN: We have no objection.

XXX (Government Exhibit No. 655 received in evidence.)

THE COURT: This is the same as the one before, isn't it?

MR. DEVORKIN: Just at an earlier date, your honor.

THE COURT: All right. No more of these. It is cumulative after this one.

MR. DEVORKIN: May I read from a portion of it?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 655 in evidence to the jury.)

Q Mrs. James, when you were working at Rio Rancho and with a property owner, did you on occasion get letters from Rio Rancho?

A Yes, we did.

Q What kind of letters?

A We would get letters saying that the value of the property is going up and within a short time there would be a price increase and to tell our friends and our neighbors about Rio Rancho and let them know about the wonderful community of Rio Rancho and bring them down to purchase some property.

Q Were these unsolicited letters?

A Yes.

Q Showing you Government Exhibit 1000 for identification, have you ever seen a letter like that before (handing)?

A Yes.

Q Where?

A Both in files and I have received some similar to this at home.

MR. DEVORKIN: I offer Government Exhibit 1000.

Q Just one second.

Is this the kind of unsolicited letter you just described?

A Yes.

MR. DEVORKIN: I offer 1000.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mrs. James, don't say anything aloud, just answer if you would yes or no, okay?

Would you read what is written up there (indicating)?

Have you read it --

A Cedar Rapids --

Q No. I said just answer yes or no. Have you read it?

A Yes.

Q And this, too?

A Yes.

Q Do you know who that is?

A Personally?

Q Yes.

A No.

Q Now, you purchased your property at an ATC dinner?

A Yes, I did.

Q And it is your testimony that you received a copy of this letter?

A I didn't say that exact letter.

Q I'm sorry.

MR. FLEMING: Well, I object, your Honor.

THE COURT: Let me see it.

MR. DEVORKIN: Just for clarification, your Honor, I offer it without the handwriting on the letter.

(Handing to the court.)

MR. FLEMING: Your Honor, could I ask another question on the voir dire?

THE COURT: Yes.

Q From your experience at working at Rio Rancho, isn't it a fact that letters of that sort were sent only to home site owners, who had purchased through brokers who no longer were in business?

A No.

Q Isn't that a fact?

A No.

Q It's not a fact?

THE COURT: Objection overruled.

XXX (Government Exhibit No. 1000 received in evidence.)

MR. FLEMING: That is without the handwriting, of course?

THE COURT: Without the handwriting.

MR. DEVORKIN: That's correct.

May I read a portion of this letter, your honor?

THE COURT: Give it to the jury. You cannot get that letter in without reading the whole thing to have it meaningful for the purpose you are offering it. The jury can read it during the recess.

MR. DEVORKIN: Fine.

BY MR. DEVORKIN:

Q Mrs. James, did you on occasion also receive complaints and requests from customers on the telephone and in person?

A Yes.

Q And were you authorized to respond to those?

A Yes.

Q Were you given any instructions about how to respond to those?

A Yes. We give them the exact same responses that we would in a letter.

Q How frequently would you say you received telephone inquiries and complaints and personal visits of that kind?

A I'd get anywhere from 20 to 30 calls a day from customers.

MR. FLEMING: Your Honor, I don't think that is responsive to the question, unless it is broken down as to what the call was about.

THE COURT: Of complaints?

Q What kind of telephone calls were these from customers?

A From customers complaining that they weren't able to sell their property and asking for brokers; customers saying that they weren't able to get the price that Rio Rancho was selling the property for.

THE COURT: You would get 20 or 30 of those calls a day, you say?

THE WITNESS: Yes.

I'd also get people who had moved to Rio Rancho complaining, saying that they weren't able to get the types of jobs that they were promised, the economy wasn't the same and saying, "I want to sell my property."

THE COURT: Strike that.

You are not contending that the defendants promised to get these people jobs in conjunction with getting the property?

MR. DEVORKIN: I didn't say that.

THE COURT: All right.

Strike the testimony.

Q Mrs. James, were you given any instructions about when, if at all, to cancel an account which was not paid up in full?

A Yes.

Q Where did you get your instructions from?

A ATC, Danny Monaco or Charlotte Masone.

Q Take it one step at a time.

Did anybody at Rio Rancho give you instructions about what to do about cancelling contracts?

A Yes.

Q Who was that?

A Mr. Whalen.

Q What were his instructions?

A If it was an ATC account, it was referred to ATC.

If it was another broker out of New York City, we just referred it to Mr. Whalen and he made the decision.

Q Were there any normal practices that you followed with your accounts when one of your accounts became past due?

A Yes. We sent dunn letters to the customer.

Q Where did you get these dunning letters from?

A From our supervisor, Mr. Allingham.

Q Was it form kinds of dunning letters?

A Yes.

Q Did you have the discretion about which ones to use?

A No, they were set dunn letters.

MR. DEVORKIN: Mr. Clerk, can we have this marked -- it is really part of 1066-A, No. 5521.

(Pause.)

MR. DEVORKIN: I believe there is a 1066-A, your Honor, which has a number of documents with different page numbers on them.

THE COURT: Wasn't that included in it?

MR. DEVORKIN: Bdt this particular page wasn't admitted at that time.

THE COURT: Make it 1066-B, then.

MR. DEVORKIN: All right.

XX (Government Exhibit 1066-B marked for identification.)

Q Mrs. James, I show you 1066-B for identification. Do you recognize it (handing)?

A Yes.

Q Where have you seen it before?

A In the files and in a booklet where we kept old dunn letters to be used.

Q What do you mean old dunning letters to be used?

A From previous time, before I was there, they kept all of the dunn letters so that we could use some of the paragraphs from these in order to write up other dunn letters.

Q Did you use this particular form to write dunning letters on your own account?

A Yes.

MR. DEVORKIN: I offer 1066-A.

MR. FLEMING: Does the word "dunning" appear in this letter?

THE WITNESS: No, I don't believe so.

MR. FLEMING: You know it does not, don't you?

THE WITNESS: No.

MR. FLEMING: I mean, you know it does not?

THE WITNESS: No.

MR. FLEMING: You don't know it does not?

THE WITNESS: It does not.

MR. FLEMING: You know it does not?

THE WITNESS: That's what I said.

MR. FLEMING: Okay.

I have no objection.

Q Who used the term "dunning" itself?

A It's just a term.

Q Did you use it at Rio Rancho?

A Sometimes.

XXX

(Government Exhibit No. 1066-B marked for identification received in evidence.)

MR. DEVORKIN: Perhaps I will show that one, also, at the recess.

Q Mrs. James, were there any policies while you were in the account services department for how long you could let an account go when it hadn't been paid before cancelling it if it wasn't an ATC account?

A Yes. Three to four months.

Q And then what would happen?

A Then it was automatically cancelled and all of the moneys that were paid in went to Rio Rancho.

Q What would you do with the account?

A It would go back to inventory.

Q Did you process it that way?

A Yes.

Q When you were with Rio Rancho, did you get requests ever for refunds?

A Yes.

Q Were you given any instructions from anyone at

Rio Rancho about what to do with requests for refunds?

A Yes.

Q Who gave you the instructions?

A Mr. Whalen.

Q What were his instructions?

A If it was an ATC account, we were to contact either Danny Monaco or Charlotte Masone. If it was not, there was no refund made.

Q You would call Masone or Monaco for instructions?

A Yes, yes.

(Continued on next page.)

Q What did you do when you got refund requests personally?

A From the customer?

Q Yes, that were not ATC customers.

A We referred them to Mr. Whalen.

Q Did you personally refer refund requests to Mr. Whalen?

A Yes.

Q Did you ever have any refund requests that were made on the basis of health or hardship reasons?

A Yes.

Q Do you remember any in particular?

A Yes.

Q How frequently would you get those kinds of requests?

A Maybe one a month.

Q And can you give us an example of the request you remember?

A Yes. I had a woman call me that her son was going to have open heart surgery and she was on welfare, having a lot of problems because of the hospital bills, and she called and cried on the phone and begged us for a refund.

Q Did you bring that to Mr. Whalen's attention?

A Yes, I did, personally.

Q What was his response?

A "We're not running welfare here. If she can't make payments on the account, you cancel it."

Q Was the account cancelled?

A Yes, it was.

Q Did there ever come a time when you bought additional property yourself?

A Yes.

Q When was that?

A In October of 1973.

Q What kind of property did you buy

A Commercial property.

Q Where was the commercial property?

A About one mile from Rio Rancho Estates industrial park.

Q Was it close to any road?

A Yes.

Q Which one?

A Highway 528.

Q And that would be in Unit 17?

A Yes.

Q For what purpose did you buy this commercial lot?

A Investment.

Q Did you consider buying any commercial lots in other units not that close to the industrial park?

A No.

Q Did you buy this particular lot from Rio Rancho or from someone else?

A From someone else.

Q Please describe how it came about that you bought this lot.

A A Mr. Frank Tydechek called me on the phone and sid that he was having problems making payments on his account. The account hadn't been paid on in about eight months prior to account services being set up. And Mr. Tydechek had tried selling his property through a broker in his home town, he had also put ads in the paper and he wasn't able to do so and he just wanted someone to take over the payments.

MR. ARKIN: If your Honor please, I object to that as hearsay and ask that it be stricken.

THE COURT: Sustained.

It is pure hearsay, Mr. Devorkin.

Q You had a conversation with this gentleman?

A Yes.

Q He didn't want to keep his account, is that right?

A Right.

Q What did you do?

A I took over payments on the account.

Q How did you actually work that out?

A We signed an exchange agreement and I took the payments over.

Q Did you talk to anybody at Rio Rancho about that?

A Yes. I went to Mr. Kurt Oler, the vice-president of contracts, and I told him that I was planning to purchase the property from the customer.

Q What did he say, if anything?

A He said it was fine, "Just don't mention that I told you to do it."

Q When you took over that account, you took over the payments, right?

A Right.

Q What happened to the past due interest?

A It was taken off the account.

Q Did you talk to anybody else in the account services department about transferring the account from that gentleman to yourself?

A Yes. I talked to Miss Nancy Reno, who was the account representative that was handling our -- my own account.

Q And she was involved in transferring the account to you?

A Yes, yes.

Q And dropping the interest that was due?

A Right.

Q After you did that, did you have any other conversations with any Rio Rancho representatives?

A With Mr. Whalen.

MR. ARKIN: Objection, your Honor.

THE COURT: About what?

MR. ARKIN: Conversation with respect to what?

Q About this contract, about this transfer.

A Well, with Miss Reno, and she took the interest off of the account.

Q And after that did you talk to anybody else about the transfer?

A To Mr. Bob Whalen.

Q When was that?

A In November of 1973.

Q How long after you made the transfer?

A One month.

Q Describe what happened, the circumstances, and what he said.

A I was called into Mr. Whalen's office and he told me that I had purchased property the month before from a customer and because the interest had been taken off of the account that I was embezzling money from AMREP and, therefore, I was fired from my position.

I said to him, "Well, what about the property?"

He said, "Fine, you can keep the property, just keep making your payments on it."

Q Did he require you to pay up for the past due interest?

A No, no.

Q Did he ever cancel the property or you?

A No.

Q Do you still own your -- withdrawn.

When you lived at Rio Rancho Estates and worked for Rio Rancho, did you ever see for sale signs on the property?

A Yes.

Q Did you ever see for sale signs for vacant property?

A Yes.

Q What periods of time did you see those signs?

A Throughout the time I lived there from November of 1972 through the time three weeks ago that we have moved.

Q In which unit did you see these signs?

A In Unit 16.

Q And how many for sale signs did you see at any one time in Unit 16?

A Fifteen.

Q About how many homes do you recall there being in Unit 16?

A About 150.

Q Did you always see the same for sale signs or did they change from time to time?

A Some changed, some were the same.

Q About how many were the the same?

A About seven or eight.

Q Over what period of time?

A Four years.

Q Did you ever see for sale signs in front of homes in Rio Rancho?

A Yes.

Q When was the first time you saw those?

A November of 1972, when we moved there.

Q And in which units did you see those for sale signs for homes?

A Unit 11, Panorama Heights, Unit 16, Corrales Heights.

Q How many for sale signs for homes did you see?

A An average of one per block.

Q And were they the same signs?

A Some were.

Q How long a period of time do you recall the same signs being up?

A A couple I've seen as long as two years.

Q About how many homes do you recall being on a block?

A About seven or eight.

Q Do you still own your undeveloped half acre and your commercial lot?

A No.

Q When did you stop your ownership?

A In March of 1974.

Q Why did you stop the ownership?

A Well --

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you try to sell the properties?

A No.

Q Why not?

MR. FLEMING: Objection.

MR. HOFFINGER: Objection.

THE COURT: Sustained.

Q When you worked for Rio Rancho, did you see any ads for Rio Rancho lots for sale?

MR. FLEMING: Objection.

THE COURT: Overruled.

Q In the newspapers?

A Yes.

Q How frequently?

A Every day.

Q Generally, what did these ads say?

A A lot --

MR. FLEMING: I object to that.

THE COURT: Overruled.

She saw it, she says.

MR. FLEMING: Can we have an instruction, then, your Honor on the hearsay nature of these --

THE COURT: The witness says she saw the ads in the newspapers.

This is merely notice that there were such ads. Whether they actually existed or not in the sense of availability is another question.

MR. FLEMING: Or whether the truthfulness of declaration, that is the instruction I am talking about, your Honor.

THE COURT: Well, whatever the ad says does not necessarily mean it is true from this witness' point of view because she does not know. All she can tell you is that there were ads in newspapers offering property for sale.

Q What did those ads say?

A Purchased Rio Rancho lot for $3,000, for sale for $2,000; Rio Rancho lots for sale cheap is this.

Q You didn't try to sell your property?

A No.

Q How much money did you forfeit when you gave up your lots?

A About $3,000.

MR. DEVORKIN: No further questions.

THE COURT: You may cross.

CROSS EXAMINATION

XXX BY MR. FLEMING:

Q Did any of those ads which you read say that the property could be exchanged into a building lot?

A Yes.

Q You are sure of that?

A Yes.

Q You are sure you read an ad that said lot for sale which can be exchanged into a building lot? You are sure you read that?

A Yes.

Q Mrs. James, were you asked to bring any documents to court today or yesterday or bring them to New York when you came to appear as a witness?

A Yes.

Q Did you bring any?

A No, I didn't.

Q Did you bring the exchange contract that you signed on this commercial property about which you testified?

A No.

Q In any event, you went to a sales dinner on October 25, 1971, is that correct?

A Right.

Q And you purchased -- you and your husband, whose name is Leslie, is that correct?

A Right.

Q Purchased one acre of property.

A Yes.

MR. FLEMING: May I have this marked, please.

(Defendant Chester Carity and Daniel Friedman Exhibit DF marked for identification)

xxx

Q I show you DF for identification, and I will ask you if that is a copy of the contract you signed that night (handing).

A Yes.

MR. FLEMING: I offer it, your Honor.

MR. DEVORKIN: No objection.

(Defendant Chester Carity and Daniel Friedman Exhibit DF received in evidence)

xxxx

Q You and your husband initialed for a New York property report and for a HUD report.

A Yes.

Q And you received them?

A Yes.

Q And you read them?

A Yes.

MR. FLEMING: May I have these two marked, please.

(Defendant Chester Carity and Daniel Friedman Exhibits DG and DH, respectively, marked for identification)

xxxxx

end t

Q Now I show you DG, did you also sign DG for identification?

A Yes.

Q I showed you DH and I will ask you if you received a copy of DH.

A Yes.

MR. FLEMING: I offer them both, your Honor.

MR. DEVORKIN: No objection.

(Defendant Chester Carity and Daniel Friedman Exhibit DG and DH received in evidence)

Q Mrs. James, DG is a document where you and your husband both signed and initialed that you do not expect to use the property as your principal residence, is that correct?

A Yes.

Q You were given a choice of signing that you do expect to use it or you do not expect to use it. At that time you initialed the do not box.

A Yes.

Q Although, as a matter of fact, there was some thought in your mind at that time that you might indeed move to Rio Rancho?

A Yes.

Q But you just signed do notbecause you weren't sure?

A Yes.

Q DH is a letter from the company, dated December 19th, which says they have been unable to reach you by telephone and asking if you understand everything about your purchase, is that correct, in essence?

A Yes.

MR. FLEMING: I won't take the time to read this, your Honor. Could I leave this again for the jury's consideration .

That would be DH in evidence, if your Honor please.

THE COURT: Yes.

Q You then took the trip to Rio Rancho to exercise your inspection privilege and your refund privilege, isn't that right?

A Yes.

Q And you decided when you got down there that what you would like to do is you would like to live there?

A Yes.

Q You exchanged a half acre of the one acre which you had purchased for a lot in Corrales Heights?

A Yes.

Q And ordered your home built?

A Yes.

Q That was sometime in the late winter or spring of 1972?

A Yes.

Q And you moved into your home on November 27, 1972?

A Yes.

Q By the way, you decided that you wanted to trade in a half acre for a building lot, the salesman did, in fact, show you Unit 11, did he not?

A Yes.

Q And he showed you Unit 16?

A Yes.

Q And he also showed you Corrales Heights?

A Yes.

Q You didn't like Unit 16, is that right?

A No.

Q And you didn't like Unit 11?

A No.

Q And you chose to build in Corrales Heights?

A Yes.

Q And you had to pay an additional $1500, isn't that right?

A Yes.

Q You moved out November 27, 1972 and am I correct that you had a job by December 6, 1972?

A Yes.

Q You made your application when you got out there and you were hired within about a week?

A Yes.

Q You were employed?

A Yes.

Q Going back to the dinner where you purchased your property, am I correct that it was your impression that the sales dinner, that the inducement, if you want to call it that, for people to buy Rio Rancho was mixed 50/50 between investment and relocation?

A No.

Q Do you recall telling someone that in a telephone conversation?

A Pardon?

Q Do you recall telling someone that in your opinion the presentation was 50/50 investment and relocation?

A No.

Q You understood at the dinner that the parcel of land, the acre of land you were purchasing was an acre which you could not build upon at that time? You understood that at the dinner, did you not?

A Yes.

Q You understood that you could exchange it for a building lot?

A Yes.

Q Am I correct that you did not feel that the dinner was high pressure?

A No.

Q I had better ask it differently.

Did you feel at the dinner that you were subjected to high pressure salesmanship?

A Not by the salesman.

Q My question is, I take the dinner as a whole, did you sitting at the dinner as a whole, anything that happened at the dinner as a whole, did you feel that you were being subjected to high pressure salesmanship?

A Yes.

Q Not by the salesman?

A I'm sorry, can I go back?

In the fact --

Q Were you subjected to high pressure salesmanship by the salesman?

A Yes.

Q You were?

A Yes.

Q Were you subjected to high pressure salesmanship from the podium?

A Yes.

Q Were you subjected to high pressure salesmanship by the film?

A Yes.

Q No question about that in your mind?

A No.

Q Do you recall speaking with an Edward Chicovsky?

A No.

Q In May of 1976, this year?

A No, I don't.

Q You don't recall it.

Does it refresh your recollection being interviewed at the Rio Rancho administration building in May of 1976 and having that interview tape recorded, does that refresh your recollection?

A Yes, I do.

Q You remember that now. Do you remember saying at that time:

"Q Did they emphasize primarily buying land as an investment value or did they emphasize buying land for residential purposes?

"A Well, it was about 50/50."

Do you recall saying that now?

A No.

Q Do you recall being asked:

"Q Did you enjoy the sales dinner or did you think it was somewhat high pressure? How would you characterize it?

"A No, I don't think it was high pressure."

Do you recall saying that now?

A Offhand I don't remember.

Q Do you recall saying, "Well, we ourselves, we were looking to move out of New York anyways", do you recall telling them that?

A Yes.

Q And saying, " This was the sort of thing you were looking for" and you said, "Right".

A Yes.

Q Does that refresh your recollection about having said I don't think it was high pressure?

A I don't remember.

Q Do you recall saying that -- going out to look at the land, you needed a vacation anyway?

A Yes.

Q It was sort of a vacation, was it not, going out on the trip to New Mexico?

A Yes.

Q And seeing Albuquerque?

A Yes.

Q Seeing the land. You enjoyed that trip?

A Yes.

Q As a matter of fact, you enjoyed living at Rio Rancho, did you not?

A Yes.

Q You were pleased with it?

A Yes.

Q In fact, it is fair to say that you loved it out there, living?

A Yes.

Q As a community you loved it, isn't that correct?

A Yes.

Q And you liked the way the community was developing as a community?

A Yes.

Q You liked the services that were available to you in the community?

A Yes.

Q You got a job within a week and your husband is working as an insurance salesman in Albuquerque?

A Yes.

Q By the way, you testified that you say your father-in-law bought some land at Rio Rancho.

A Yes.

Q Does he own three restaurants in the New York area?

A Yes, he does.

Q Is that a family business?

A Yes.

Q How is business?

A Good.

Q You say that in October of 1973 you purchased commercial property in Unit 17, is that correct?

A Yes.

Q And you did that -- you signed an exchange agreement?

A Yes.

Q With a Mr. Frank Tydechek?

A Right.

Q Where does he live?

A I don't remember.

Q Do you know his telephone number?

A I don't remember.

Q Do you know how we could reach him?

A No.

Q Do you know where the exchange agreement is?

A No.

Q You testified that you were fired because you did that, is that right?

A Yes.

Q On your oath, Mrs. James, did you not by computer transfer a delinquent account held in some other name into the name of your husband Leslie James?

A Yes.

Q And was that account a delinquent account not five payments delinquent when you transferred it to the name of Leslie James?

A Yes.

Q Did you not by computer put seven payments into that account to make that account paid up two payments in advance?

A No.

Q Was not a payment reduction on that account made by computer?

A Yes.

Q Was there not an attempt to delete accrued interest from that account again by computer?

A Yes.

Q Was there not an attempt with regard to that account by computer to raise the vacation travel allowance from $200 to $300 ?

A No.

Q Did you not in fact on your oath, Mrs. James, use a computer to transfer a delinquent account into the name of your husband Leslie James?

A Yes, I did.

Q And then attempt to alter the record of that delinquent record again by computer?

A Not myself.

Q With assistance from some other employee?

A The account representative who handled the account.

Q At your request?

A It was --

Q Did you ask her to do it?

A Yes.

Q And the company found out about it?

A Yes.

Q And they fired you?

A Yes.

Q Is that the exchange you are talking about?

A Yes.

Q You, in fact, were acquiring land without payment by computer, were you not?

MR. DEVORKIN: I Object to that. That is misleading because he is not talking about interest or principal, your Honor.

THE COURT: Overruled. A change was made in the account by computer, I gather the next question is was there really an exchange.

MR. DEVORKIN: He is talking without payment, he said.

THE COURT: To the person who owned it.

MR. DEVORKIN: That is fine.

THE COURT: I gather that the whole point of the cross examination.

MR. DEVORKIN: I have no problem with that.

THE COURT: If I have misspoken, Mr. Fleming, I withdraw my comment.

A Did you want to know if the customer was paid? Yes, he was.

Q I want to know the account in question was in the name of another customer?

A Yes.

Q Did you not transfer that account from that customer's name to your husband's name?

A Yes.

Q Did you not try to delete interest owing on that account?

A Yes.

Q And try to upgrade the vacation and travel allowance?

A I don't remember.

Q You don't recall that?

A No.

Q And pay in seven payments to take it out of delinquency status and put in advanced payment status?

A No.

Q You can recall only trying to delete the entry?

A Right.

Q What was the name of that customer?

A Frank Tydechek.

Q What authorization did you have to do that?

A I asked Mr. Kurt Oler, the vice-president of contracts.

Q Before you did it?

A Yes.

Q What authorization did you have from Mr.

Tydecheck?

A I purchased the property from him.

Q What did you pay him?

Q $10. He only asked for a receipt saying that he had sold the land.

Q Where did you meet him?

A We talked over the phone and we sent the papers through the mail. I sent him a letter with the check included.

Q Where does he live?

A I don't remember.

Q Do you have the check?

A No.

Q What state does he live in?

A I believe it was Minnesota.

Q Did he call you or did you call him?

A He called me.

Q At your home?

A At work.

Q Were you not on November 27, 1973 questioned by Mr. Whalen about this use of the computer?

A Yes.

Q Did you not admit to Mr. Whalen that you had transferred the account to your husband's name?

A Yes.

Q Did you not admit to Mr. Whalen that you had eliminated the five payment delinquency and put the account in a two payment in advance status?

A No.

Q Did you not admit to him that you had tried to delete interest accrued?

A Yes.

Q Did you not admit to him that you tried to upgrade the vacation travel allowance on that account by computer?

A No.

Q When you went that very day to the New Mexico Employment Security Commission, you told them that you had been fired because you had violated a company rule not to purchase property or transfer property to yourself, is that right?

A Yes, that was what Mr. Whalen had said.

MR. FLEMING: May I have this marked, please.

(Defendants Chester Carity and Daniel Friedman Exhibit D marked for identification.)

Q By the way, when Mr. Whalen confronted you and terminated you, during that conversation did you tell Mr. Whalen that Mr. Oler had authorized you to transfer this account into your husband's name?

A Yes.

Q Did you give him Mr. Thaichek's name?

A He had Mr. Thaichek's name.

Q From the accountants?

A Yes.

Q Isn't that where you got Mr. Thaichek's name?

A From Mr. Thaichek.

Q I show you DI for identification and ask you if you recognize that.

A Yes.

Q That is your application for unemployment insurance?

A Right.

MR. FLEMING: I offer it.

MR. DEVORKIN: May I ask one question, your Honor?

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

Q On question number 6 that you answered --

A Yes.

Q -- do you see that?

A Yes.

Q That was the rule that Mr. Whalen described to you?

A Yes.

MR. FLEMING: I object.

THE COURT: Sustained.

MR. DEVORKIN: I have no objection.

THE COURT: That has nothing to do with voir dire, Mr. Devorkin. Objection sustained. Strike the question.

(Defendants Chester Carity and Daniel Friedman Exhibit DI received in evidence.)

BY MR. FLEMING:

Q Now, this application asks what reason were you given -- I am sorry -- asks if you were fired because you violated company rule, describe the rule, is that correct?

A Yes.

Q You said, "Not to purchase property or transfer property to myself," is that right?

A Yes.

Q You did not say anything about trying to delete interest from an account?

A No.

Q That was $224 in interest, by the way, wasn't it?

A Yes.

Q And you signed this Harriet James, I am aware that there are penalties for false statements?

A Yes.

Q By the way, you did not get unemployment compensation, did you?

A I don't remember.

Q Didn't the state reject your claim?

MR. DEVORKIN: I object as irrelevant.

THE COURT: Overruled.

A I don't remember.

Q You don't remember whether you got unemployment --

A No, I don't remember at that time.

Q Where did you work after that? Do you remember?

A Montgomery Ward.

Q Are you still working there?

A No.

Q How long did you work at Montgomery Ward?

A About six months.

Q What was your job there?

A Collections.

Q Were you fired there?

A No.

Q Just quit?

A Yes.

MR. FLEMING: May I have Exhibit 346-T, Mr. Devorkin?

MR. DEVORKIN: Your Honor, I would like to make a request for the statement Mr. Fleming was referring to under Rule 613A of the rules of evidence.

THE COURT: He is asking for an exhibit in evidence.

MR. DEVORKIN: I know. In the meantime I would like the statement he was using under Rule 613A.

MR. DEVORKIN: Your Honor, can I have the statement so I can look at it?

THE COURT: Mr. Fleming has asked you for an exhibit which you put in evidence.

MR. DEVORKIN: I have given it to him.

THE COURT: He now wants to question the witness on the statement that you put in evidence. When he has finished with that we will talk.

Q Now, did you testify yesterday that you received three or four complaint calls a day while you were employed as an account representative?

A Yes.

Q Did you testify that 19 other girls were similarly employed as an account representative?

A Yes.

Q And that they similarly to your knowledge were receiving three to four complaint letters a day?

A Yes.

Q Now, am I correct that if we take four complaint letters a day, that would be 20 a week, isn't that right?

A Yes.

Q And over a 50-week working period that would be a thousand a year?

A Yes.

Q If you have 20 girls, that would be 20,000 written complaints a year?

A Yes.

Q In addition to that did you testify this morning that you were receiving 20 to 30 telephone calls a day making complaints?

A Yes.

Q If we take 30 calls a day, that would be 150 complaint calls a week, is that right?

A Yes.

Q That would be on a 50-week year, it would be 7,500 complaint calls a year?

A If you say so.

Q I take it that just as the other 19 girls were receiving written complaints as you were, they were also receiving telephone calls, 20 or 30 a day on complaints, is that right?

A Yes.

Q You know this?

A Yes.

Q You were there?

A Yes.

Q 20 times 7500 a year would be 150,000 complaints, is that about right?

A Yes.

Q Add that to the 20,000 written complaints and you would have about 170,000 complaints which to your knowledge were received at Rio Rancho during the year you worked there?

A Yes.

Q And they only have 45,000 customers, don't they?

A Yes, but people call back.

Q They only have 45,000 customers, is that right?

A Yes.

Q You, as a matter of fact, serviced only 3,000 accounts?

A Yes.

Q And yet on your testimony you would have received somewhere about 8500 complaints from 3,000 accounts, is that right?

A Some people called more than once.

Q Is that right on your testimony?

A Yes.

Q 8500 complaints on 3,000 accounts?

A Yes.

Q By the way, there was a watts line coming into Rio Rancho, was there not?

A Yes.

Q So that the customers could call in free?

A Right.

Q It's like the Sheraton Hotel, 800 number?

A Right.

Q Do you know how many calls that watts line could handle a day?

A No, I don't.

Q Did you testify yesterday that a typical complaint that you saw in 1962 letters, letters dated 1962, which said that the salesman had told the home site owner that there would be a resale program?

A Yes.

Q I take it those were from people who had purchased at dinners?

A I don't know where they purchased.

Q Nothing in the letter to say that?

A No.

Q Did you see any 1962 or '3 letters from people who said, I purchased land at a dinner and the salesman told me I would be able to sell it in five years or sell it in ten years?

A I don't remember if it said at a dinner.

Q You don't remember that?

A If it said at a dinner.

Q You don't remember that at all. You cannot say that you recall these letters mentioning whether the purchase was at a dinner or not?

A No.

Q Can you recall whether any of these letters that you saw, these four a day and the ones you saw in the file running back to 1962, mentioned that the statements had been made at a dinner?

A No.

Q Did they mention the name of the salesman?

A Some did.

Q Now, you know, of course, that there were no sales dinners for Rio Rancho land until 1965 -- late 1965 or early 1966, you know that, don't you?

A No.

Q Now, I place before you Government's Exhibit 346-T. Do you have it?

A Yes.

Q That's a letter addressed to Mr. William J. Holdorf?

A Yes.

Q It is signed by you?

A Yes.

Q It says Dear Mr. Holdorf. Thank you for your letter of February 23, 1973, is that right?

A Yes.

Q Do you recall being questioned about that yesterday?

A Yes.

Q And Mr. Devorkin questioned you about the third paragraph. Do you recall those questions?

A Yes.

Q The third paragraph is:

"I am pleased to advise you that the current selling price of a one half acre site in unit 10 similar to yours is now $3,175. Corner lots are an additional $700."

Have I read correctly?

A Yes.

Q Mr. Devorkin asked you: "What kind of a customer letter did you use paragraph 3 for?"

Do you recall these questions and answers --

THE COURT: Page?

MR. FLEMING: Page 35[illegible], your Honor.

Q (Continuing):

"Q And what kind of customer letter did you use paragraph 3 for?

"A A customer who wanted to sell his property and asked what we were selling for."

Do you recall giving that answer?

A Yes.

Q And then question by Mr. Devorkin:

"Q Did you also use it if he asked the value of his property?

"A Yes, we would."

Is that right? This paragraph 3 was written to a customer who wanted to sell his property and asked what you were selling property for or if he asked for the value of his property, isn't that right?

A Yes.

Q Did you meet Mr. Holdorf here in New York when you were here just yesterday?

A No.

Q He wasn't back in the witness room with you?

A No.

MR. FLEMING: May I have this marked, please.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit DJ marked for identification.)

Q I show you DJ for identification and I will ask you if you recognize it and, if you would, would you -- I will first ask you if you recognize it.

A Yes.

Q DJ is, in fact, the letter from Mr. Holdorf to which you are responding in 346-T in evidence, right?

A Yes.

MR. FLEMING: I offer it.

MR. DEVORKIN: No objection.

XX (Defendants Chester Carity and Daniel Friedman Exhibit DJ received in evidence.)

(Mr. Fleming read from Defendants' Exhibit DJ in evidence to the jury.)

Q You testified yesterday that paragraph 3 of your letter was the type of paragraph which was sent to a customer who wanted to sell his property, did you not?

A Yes.

Q Is there anything in Mr. Holdorf's letter which says he wants to sell his property?

A No.

Q You also said you sent it to customers if they asked the value of his property, is that right?

A Yes.

Q Did Mr. Holdorf ask the value of his property?

A He asked what it was selling for.

Q Does he say how much is my property worth?

A No.

Q He asked for the selling price of comparable Rio Rancho land, period, isn't that right?

A Yes.

Q And that's what you answered, isn't that right?

A Yes.

Q Isn't it a fact that is what Rio Rancho always answered, we are selling comparable property, isn't that right?

A Yes.

Q And they never told you to tell people that they could sell peoples' property for them?

A No.

Q As a matter of fact, you knew that the company was not in the business of selling property, did you not?

A Yes.

THE COURT: We will have a recess.

(Jury left the courtroom.)

MR. DEVORKIN: Before we all adjourn here, could I renew my request under Rule 613A.

THE COURT: What rule are you referring to?

MR. DEVORKIN: 613A of the federal rules of evidence, the last phrase of it.

THE COURT: What is your point?

MR. DEVORKIN: He examined Mrs. James on the basis of a prior statement which was tape recorded. I would like to have -- he obviously because he was reading questions and answers has a transcript of the recording. I would like to have the transcript. I think I am entitled to it under Rule 613A.

THE COURT: I think you have to show it to him. The portions that were read.

MR. DEVORKIN: I think I am entitled to the entire thing, your Honor, because I am entitled to know whether she made consistent statements at the time she gave this statement to the defense. I would be entitled to use that.

THE COURT: I think you are limited to the inconsistency they were trying to bring out.

MR. DEVORKIN: She obviously had a conversation with somebody for some period of time talking about Rio Rancho as a community and her experience. I would ask your Honor to look at it to determine what is relevant to the questions that were asked on cross examination.

THE COURT: I will look at it.

If she was asked specifically did you say this to this man, the answer is yes or no. He was reading the question and answer to it.

MR. DEVORKIN: There might be other questions and answers consistent as her testimony today and I think I would be entitled to see those.

MR. SPRIZZO: The cases I read say they are entitled to those portions I/we used and those related to those portions and not any more.

THE COURT: That's all he is asking for. Reasonably related to.

MR. SPRIZZO: That's the rule.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

MR. FLEMING: May I have these two documents marked, please.

Your Honor, I am having marked what I believe is compliance with your Honor's direction.

THE COURT: All right.

MR. FLEMING: I would like your Honor to review it.

THE COURT: I have already set out to you what you should do.

MR. FLEMING: That's right, and I think I have done the right thing.

THE COURT: Okay.

XX

(Defendants Chester Carity and Daniel Friedman Exhibits DK and DL, respectively, were marked for identification.)

THE COURT: You don't need that now, you can continue on with your cross examination.

MR. FLEMING: Yes. I want to hand it to Mr. Devorkin.

CROSS EXAMINATION (Continued)

BY MR. FLEMING:

Q Mr. Holdorf was one of your accounts?

A Yes.

MR. FLEMING: May I have this marked, please.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit DM marked for identification.)

Q I want to show you DM for identification, and ask you if you recognize that as part of the Holdorf account file (handing).

A Yes.

MR. FLEMING: I offer it, your Honor.

MR. DEVORKIN: Do I understand, Mrs. James, that you saw this letter in Mr. Holdorf's file?

THE WITNESS: Oh, no, I'm sorry. I didn't -- I don't know if I specifically saw that letter. I'm sorry.

MR. DEVORKIN: I object.

THE COURT: She says she never saw it.

Objection sustained.

Q Did you testify yesterday it was your practice to review old files?

A Yes.

Q And it was in the course of the review of the old files that you saw these 1962 letters?

A Yes.

Q And Mr. Holdorf was one of your own --

A Yes.

Q -- one of the 3,000 account files you handled?

A Yes.

Q And the letter which the government introduced yesterday, 346-T and the letter from Mr. Holdorf which we introduced today DJ which relate to one another, come from the Holdorf file?

MR. DEVORKIN: Is that Mr. Fleming testifying or --

MR. FLEMING: It has already been said.

THE COURT: She said so. It is already in evidence.

MR. DEVORKIN: She said she didn't recognize that particular letter.

MR. FLEMING: I am talking about DJ.

THE COURT: He is talking about DJ, Mr. Devorkin, not DM.

MR. DEVORKIN: Fine.

Q I show you DM for identification again, and I will ask you, if you can recognize it, yes or no, as a part of the Holdorf file (handing).

A I can't say that I have seen it. Out of 3,000 files, I've gone through hundreds of letters every day. I can't say specifically I've read this letter.

Q My question is, can you recognize it as a part of his file?

A Yes.

MR. FLEMING: Is that sufficient, your Honor?

THE COURT: The objection is overruled.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit DM received in evidence.)

MR. FLEMING: May I read it, your Honor?

THE COURT: Yes.

(Mr. Fleming read from Defendants' Exhibit DM in evidence to the jury.)

Q I take it, then, that Mr. Holdorf never told you that anyone had told him that the company had a resale -- I'm sorry -- Mr. Holdorf never told you when he purchased his property the company would resell his property for him?

A I've never spoken to Mr. Holdorf.

Q You testified about a health and hardship request that you received.

A Yes.

Q Did you ever ask that woman -- that request came by telephone?

A Yes.

Q Did you ask the woman to reduce her request to writing?

A I directly took the account into Mr. Whelan.

Q My question is, did you ask the woman who was requesting, the woman you described this morning, who on the telephone was requesting a health and hardship request or hardship forgiveness --

A No.

Q -- did you ask her to reduce her request to writing?

A No.

Q Was she one of your accounts?

A Yes.

Q Do you recall her name?

A No.

Q Do you recall if the woman ever did reduce her request to writing?

A No.

Q Again, I'm sorry, this is preliminary.

You bought a house in Rio Rancho and it was built and you moved in on November 27, 1972, is that correct?

A Yes.

Q And you got a job five days later?

A Yes.

Q And I think you testified that you liked Rio Rancho?

A Yes.

Q Did you testify that after you moved into your house at Rio Rancho on November 27, 1972, you then went around to Albuquerque and priced houses in other areas?

A Yes.

Q Were you thinking of moving?

A Yes.

Q Now, you have moved, have you not?

A Yes.

Q By the way, how soon did you price -- I mean, you went -- withdrawn.

You now have moved from Rio Rancho, is that correct?

A Yes.

Q And when did you move from Rio Rancho?

A Three weeks ago.

Q Three weeks ago.

When did you sell your house?

A A month ago.

Q One month ago.

Now, how long did you have your house up for sale?

A Oh, about three months.

Q Three months?

A Yes.

Q And when people came in to talk to you about purchasing your house, did you tell them that there were better values in the northeast side of Albuquerque?

A I talked to no one, no customers. I went through a realtor.

Q Did you tell your realtor to tell anyone who wanted to buy your house that there were better values, to your knowledge, in northeast Albuquerque?

A No.

Q Or in Paradise Hills?

A No.

Q Or in Volcano Cliffs?

A No.

Q What did you sell your house for?

A 40 -- 40,400.

Q In three months?

A Yes.

Q And you paid 23,000 for it?

A House and lot, 28,600.

Q You paid $28,600 for your house in 1972, is that correct?

A Yes.

Q At Rio Rancho?

A Yes.

Q And you lived in it?

A Yes.

Q And you liked it?

A Yes.

Q And you sold it this year, 1976, for over $40,000?

A Yes.

Q And you sold it three months after you put it on the market?

A Yes.

Q And you moved to another house, didn't you?

A Yes.

Q And you moved to another house in northwest Albuquerque, didn't you?

A Yes.

Q And as a matter of fact, you bought a house, when you moved, you bought a house in northwest Albuquerque because northwest Albuquerque is where the best values are, isn't that right?

A Northwest Albuquerque is not on the mesa, it's part of the city of Albuquerque.

THE COURT: That isn't the question put to you, is it?

Read the question back to the witness.

(Record read.)

A No.

Q Well, in any event, you didn't buy in northeast Albuquerque, did you?

A No.

Q One other question --

A I didn't --

Q One other question.

When Mr. Whalen called you in on November 27th and ultimately terminated you, did you not tell, admit to Mr. Whalen, thatyou had been dishonest?

A I don't remember.

Q Why didn't you bring the documents that you were requested to bring in?

A Because it was such short notice and I had to get my children to baby sitters and it was a rush from work.

CROSS EXAMINATION

BY MR. ARKIN:

Q How long have you been in New York waiting to be a witness?

A Tuesday morning.

Q How many times have you met with Mr. Devorkin?

A Tuesday for a couple of hours.

Q Is that the only time?

A And just speaking to him occasionally the past couple of days.

Q For how long?

A A few minutes at a time.

Q How many minutes at a time?

A Two, three minutes.

Q How many times?

A I don't know exactly.

Q You have been around the court house the last few days?

A Yes.

Q Now, you lived at Rio Rancho for about three years, three and a half years altogether, didn't you?

A Four years.

Q Four years. Excuse me.

And you worked at Rio Rancho for about a year and a half?

A About a year.

Q And you are pretty familiar with the entire developed area, aren't you?

A Yes.

Q You have driven around it?

A Yes.

Q Had an interest in it?

A Yes.

Q You said that you saw 15 for sale signs in unit 16?

A Yes.

Q Do you know where unit 16 is?

A Yes.

Q Where is it?

A It's where the shopping center is, in that area.

Q Behind the administration building?

A Yes.

Q That was the original housing unit at Rio Rancho?

A Yes.

Q And you have driven up and down the streets so that you can be able to tell how many for sale signs there were?

A No.

Q You have driven up and down the streets of unit 16, haven't you?

A My babysitter lives in unit 16. I drive there every day.

Q So you have been through it several times?

A Yes.

Q Every day?

A Yes.

Q How many streets does unit 16 have?

A I can't say for sure.

Q You said there was about 150 houses? Is that what you say?

A Yes. I can't say definitely.

Q You say about 150 would be a fair estimate?

A Yes.

Q So if I said to you there were between five and 600 houses in unit 16, you would say that is way off?

A I -- I'm really not sure.

Q There is a big difference between 150 and 500 or 600, isn't there?

A Yes.

Q And you have been there long enough to know what the difference is, isn't that so?

A Yes.

MR. DEVORKIN: I object to that.

THE COURT: She answered.

The objection is overruled.

Q And your testimony is there were about 150 houses?

A I suppose. I really don't know.

Q With respect to those for sale signs, the 15 --

A Yes.

Q -- can you tell me, did they appear all in one part of unit 16 or all throughout unit 16?

A Throughout unit 16.

Q About one per street?

A Yes, an average.

Q An average of one per street?

A Yes.

Q You would say there are about 15 streets in unit 16?

A I'm not sure.

Q How many houses are on a street in unit 16?

A Four, five.

Q Per street?

A Yes.

Q Tell me, Mrs. James, were you intentionally exaggerating the amount of houses for sale compared to the number of houses in unit 16 just for your purposes of testifying here today?

A I didn't say that houses for sale in unit 16 --

Q Answer yes or no.

A You asked me property. That's not the question you asked me.

MR. DEVORKIN: Mr. Arkin is confusing houses and vacant lot and I separated them quite early --

THE COURT: He is talking about houses.

MR. ARKIN: And that's what her testimony was.

THE WITNESS: That's not how I answered. Before I answered property.

THE COURT: She says she saw for sale signs at unit 16, about 15 signs out in unit 16 had 150 homes. That's what she said and that's what she is being asked about now, unit 16 for sale signs on homes.

MR. DEVORKIN: Your Honor, when she testified on direct, she said 15 and then I asked her about for sale signs for homes and there was a separate category for that.

I believe I distinguished between houses and vacant lots and I think she testified that way.

THE COURT: I know she did, but she made statements regarding homes.

MR. DEVORKIN: Right.

THE COURT: And she is being cross examined about the statements she made regarding homes.

MR. DEVORKIN: Okay, fine. I am saying, it is not the 15 signs, again. I think that's why Mr. Arkin's question is misleading.

THE COURT: He is talking about homes, the witness testified about homes in unit 16.

Q All right, Mrs. James. You said you also saw certain for sale signs which were up for as long as two years?

A Yes.

Q You didn't have any difficulty selling your house, though, did you?

A No.

Q At a substantial profit?

A Yes.

MR. ARKIN: I don't have any further questions.

(Continued on next page.)

THE COURT: Redirect.

REDIRECT EXAMINATION

XXX BY MR. DEVORKIN:

Q You said on cross examination, I believe, that you were not fired from Montgomery Ward, is that correct?

A No.

Q What kind of job do you hold now?

A Bookkeeper.

Q How long have you held that job?

A About two months. I just went back to work.

Q Did you tell your present employers where you had worked previously?

A Yes.

Q They were free to make inquiries there?

A Yes.

Q When you worked in account services, were accounts transferred from one person to another from time to time?

A Yes.

Q And that was done by computer?

A Yes.

Q This Mr. Tydecheck owed interest on this account, correct?

gtjw 2 James - redirect

A Yes.

Q And principal payments, is that correct?

A Right.

Q But you didn't pay the interest for Mr. Tydecheck, did you?

A No.

Q Why didn't you pay the interest for Mr. Tydecheck?

MR. ARKIN: I object.

MR. FLEMING: I object.

I withdraw it.

MR. DEVORKIN: They went all over this cross. There were all kinds of suggestions and I think she should explain why she didn't pay the interest.

MR. FLEMING: That was not my objection. My objection related to the state of mind of the inquiry, but I --

THE COURT: Objection sustained.

Q When you didn't pay the interest, did you consider it wrong to do that?

A No.

Q Why didn't you consider it wrong?

A There had been no precedent for it. I talked to the girl that handled the account and since it had never been done before there had been no precedent. When they had customer relations in service, accounts had been sitting around for months and months and months that had never been taken care of and this account was finally being worked on.

Q And you didn't owe the money on that account, did you, that was interest?

A No.

MR. DEVORKIN: Can I have Defendant Exhibit DG, please?

THE COURT: Mr. Devorkin, come on. Of course she didn't, but she bought the property, therefore, I assume assumed the liability.

MR. DEVORKIN: I don't assume that at all, your HOnor. I don't think there is any evidence of that.

THE COURT: I think you have to assume that normally.

MR. DEVORKIN: That was a personal debt of Mr. Tydecheck's for the interest.

THE COURT: No, it went with the property. Come on, Mr. Devorkin.

MR. DEVORKIN: Can I have Defendant Exhibit DG, please.

(Handing to Mr. Devorkin)

MR. DEVORKIN: Can I have the employment contract?

(Handing to Mr. Devorkin)

MR. DEVORKIN: May I read from Defendant Exhibit DI in evidence, your Honor?

THE COURT: You may.

(Mr. Devorkin read from Defendant Exhibit DI in evidence to the jury)

Q You signed this document, correct?

A Yes.

Q And it was truthful when you signed it, wasn't it?

A Yes.

Q And nobody took that property away from you that you transferred, did they?

A No.

Q You say you received phone calls and letter inquiries from customers, correct?

A Yes.

Q Did you receive multiple inquiries from the same customers?

A Yes.

Q Did that occur frequently?

A Yes.

Q Do you recall Mr. Fleming showing you Government Exhibit 346-T in evidence?

A Yes.

Q That was your letter to Mr. Holdorf?

A Yes.

Q And I take it you received similar requests such as Mr. Holdorf's request for value of property?

A Yes.

Q And you wrote back telling the customer what Rio Rancho was selling the property for?

A Right.

Q After you wrote and told the customer what Rio Rancho was selling the property for, did you receive any further inquiries from those customers?

A Yes.

Q What would those inquiries be?

A For resale.

Q What would they say?

A They would say, "I see Rio Rancho is selling property for a certain amount. Can you tell me how to go about selling my property?"

Q Mr. Arkin asked you or Mr. Fleming asked you about not bringing documents to New York.

A Yes.

gtjw 6 James - redirect

Q Do you recall that?

A Yes.

Q When were you called by the U.S. Attorney's office telling you to come to New York?

A Saturday afternoon.

Q And what plane did you take to New York?

A 2:00 a.m. flight.

Q What day?

A Tuesday morning.

Q You got here at what time?

A About 9:30 a.m.

Q And you waited around all day?

A Yes.

Q Did you write a note to yourself back home reminding yourself to bring the documents?

A Yes.

Q And you forgot?

A Yes.

Q You have recently moved to Northwest Albuquerque, right?

A Yes.

Q Which side of the Rio Grande River is that?

A It's on the east side of it.

Q How far from Rio Rancho is it?

A About nine and a half miles.

Q How would you compare the area you are living in now with Rio Rancho?

A I like it very much. It's very well developed area and it's a beautiful home and I feel for the money we got a lot more than we had at Rio Rancho.

Q You bought your home and your lot at Rio Rancho for about $28,600, right?

A Right.

Q You took a mortgage on part of that, am I correct?

A Yes.

Q You paid interest on that?

A Yes.

Q Do you recall the rate of interest you paid for your mortgage?

A Seven and a half.

Q You were paying seven and a half percent on the unpaid balance?

A Right.

Q Which was about $20,000?

A Yes.

Q You were paying off $1500 in interest on that house since you owned it?

A Yes.

Q You paid about $6,000 interest since you owed it?

A Yes.

Q I take it your present house is nine and a half miles closer to Albuquerque or the center of Albuquerque than Rio Rancho is?

A Yes.

Q Do you recall Mr. Fleming asking you how you felt about Rio Rancho as a place to live?

A Yes.

Q Whether you liked Rio Rancho as a place to live?

A Yes.

Q How do you feel about Rio Rancho as an investment for vacant land?

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. DEVORKIN: No further questions.

THE COURT: You may step down.

MR. FLEMING: May I have one question, your Honor?

THE COURT: One.

RECROSS EXAMINATION

BY MR. FLEMING:

Q Did Mr. Devorkin ask you to write your husband and have your husband send the materials in before you testified?

A I called my husband.

Q I said, did Mr. Devorkin ask you to call or write your husband and have your husband mail the materials in before you testified?

A Yes.

Q And you made that call?

A Yes.

Q And where are the documents?

A I can't do anything about the U.S. Mail.

Q Okay. They are on their way?

A Yes.

REDIRECT EXAMINATION

BY MR. DEVORKIN: XX

Q By the way, your entire account file is with Rio Rancho, isn't it?

A Yes.

MR. DEVORKIN: No further questions.

THE COURT: You may step down.

(Witness excused)

gtjw 10

MR. KAUFMAN: The government calls Gustave Mols.

GUSTAVE ALFONS MOLS, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Mols, I want to caution you to talk very slowly so we can all understand you. Okay.

A Yeah. My English no that good.

Q And I also want to caution you just to answer the questions that are asked of you. Do you understand that?

A Okay.

Q Mr. Mols, how old are you?

A I am sixty-seven years old and eleven months.

Q And do you have a family?

A Only my wife.

Q And are you currently employed?

A No. I am retired.

Q And how long have you been retired?

A From the 31st of December, 1973.

Q And what type of work did you do before you retired?

A I was -- before I retired?

Checker control and hi-lo lifter at the same time.

Q At what type of business?

A Photo products, commercial and industrial.

Q Photo productions?

A Photo products.

Q And how long did you do that kind of work?

A Three and a half years.

Q And where did you do that kind of work?

A In North Street, New Jersey.

Q New Jersey?

A North Street.

Q Where were you born, Mr. Mols?

A In Belgium.

Q And when did you come to the United States?

A In 27th of June 1960.

Q 1960?

A Sixty, 6-0.

Q Are you an American citizen now?

A Yeah, I am.

Q When you came to the United States in 1960, where did you live?

A I lived, first, in Woodcliff Lake, New Jersey.

gtjw 12 Mols - direct

Q Did you live in New Jersey for the next thirteen years?

A 'Till I retired.

Q Where do you live now?

A I live at New Mexico, Rio Rancho, 4712 La Cantora Court.

Q And you have been living at Rio Rancho since 1973?

A Yeah.

Q On how much land is the house that you own?

A Approximately a quarter of an acre. 90 feet by 120.

Q And in what section of Rio Rancho do you live?

A Corrales Heights.

Q You own other land at Rio Rancho Estates?

A I do.

Q How much land do you own at Rio Rancho Estates?

A Two multiple lots and 21 lots on half acre.

Q That is two multiple dwelling lots, is that correct?

A Right

Q And ten and a half residential --

A Half acres. 21 residential half acres.

That's all together ten acres and a half.

Q For a total of ten and a half acres?

A Right.

Q Have you paid for all that land?

A Yeah, I did, I do.

Q And how much have you paid for all that land?

A Approximately $26,000.

Q And is that--

THE COURT: Pardon me. Twenty-six?

THE WITNESS: $26,000.

Q Is that principal or principal with interest?

A No, without interest.

Q How much have you paid with interest?

A I can't tell because I'm not familiar with the interest. I know I had to pay interest on top, but I don't know much of this. Maybe -- I can't tell you.

Q Do you know approximately how much you paid?

A Maybe $4,000. Maybe. I don't know.

Q Did you ever own more land at Rio Rancho than what you own now?

A What you say, sir?

Q Did you ever own more land at Rio Rancho than what you own at the present time?

A Yes, one acre.

Q An additional acre?

A An additional acre.

Q And what happened to that one acre?

A In the street I got a friend and he say he got a friend came in the house and he calls me up to come over in his house,and he ask me if I want to sell land to his friend.

I said I'll be glad to.

Then he said, how much?

I said, "I don't want to be involved. You go to the land division of Rio Rancho AMREP, you ask the price in Unit 7 for one acre lot. As soon you knew the price from AMREP Corporation, land division, you come back to me, you tell me the price and now we do it half the price from AMREP Corporation and then give another, "All together 45 percent of the price he should pay by AMREP Corporation, what he did."

Q And this person --

A He paid some to me. It was $7,600 in the land division, and I ask him $3,600 and I paid the titles and all the cost for me.

Q Let me make sure I understand.

In other words, he told you that AMREO was selling an acre of land for $7,600.

A $7,600 that he told me.

Q And you sold it to him for how much?

A For thirty-six.

Q Excuse me?

A $3600, the whole acre.

Q I gather this acre of land that you owned was in Unit 7?

A Unit 7.

Q And when was it that you sold this acre of land?

A If I recall, it was, in the beginning of 1975.

Q And when had you bought that acre of land?

A That acre of land I bought in 1967, in March, I believe.

end t4b

Q And how much did it cost you when you bought it?

A The last three acres I bought that time and it was on discount price, the more you buy the less you pay, the way they told me, and I paid for the three last acres $5,250, I believe, and that is about $1750.

Q In other words, this one acre we are talking about was part of the total of three acres you bought?

A Right, right.

Q And when you purchased it, you received a discount?

A A big discount, yeah, very big.

Q Is that because you had previously bought land at Rio Rancho?

A Because I bought nine acres before. That's why I bought it all the time, they gave me a big discount; the more I buy the less I pay.

Q When did you first hear of Rio Rancho Estates?

A In October 1966.

Q And how did you hear about Rio Rancho?

A There was an invitation in the mailbox.

Q An invitation to what?

A To go to a dinner in the neighborhood, in the neighborhood where I lived.

Q Did you go to the dinner?

A I went to the dinner.

Q Did you go with anyone?

A With my wife.

Q And did you buy any land at that dinner?

A I did.

Q How much land did you buy?

A Four acres.

(Government Exhibit 1407-A marked for identification)

xx

Q Mr. Mols, I show you what has been marked Government Exhibit 1407-A for identification, and ask if you can identify this?

A I have to take my other glasses, because this is for far away. I need them because I got triple vision on the job.

That's the real one. I got more copies of that, but --

Q Is this the contract that you signed?

A Only the original.

Q Is this the contract you signed at the first dinner you went to?

A Right.

MR. KAUFMAN: The government offers 1407-A.

MR. ARKIN: We have no objection to 1407-A.

MR. SPRIZZO: No objection.

(Government Exhibit 1407-A received in evidence)

MR. KAUFMAN: May I just read from a portion of it, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 1407-A in evidence to the jury)

Q What is your wife's name?

A Mols.

Q Anna Maria?

A Yes.

(Mr. Kaufman continued reading from Government Exhibit 1407-A in evidence to the jury)

Q Mr. Mols, why did you buy land at that dinner?

A For investment.

Q At the time you bought the land, did you think you would move to Rio Rancho Estates?

A No.

Q Did you go to another dinner a few weeks later?

A Yes.

Q How did you happen to go to that next dinner?

A They told me I can come back all the time I wish to, and they told me at the same time that on the 1st of May -- I think it was May or April -- the price is going up about $600 an acre.

Q You were told that the price of the land would be going up in May?

A Yeah. Next year, I mean, not in '66.

Q In 1967?

A Yes.

Q And did you go to that dinner with your wife?

A Yes.

Q Did you have the same salesman or a different salesman at the next dinner?

A I think I got the same salesman that I had at the first dinner.

Q Did you buy mkore land at that dinner?

A I bought two lots in eleven multiple dwelling.

Q Why did you buy multiple dwelling land at that dinner?

A Because the salesman, he got land in commercial and multiple dwelling and he told me he going to build next year, they want to move to Rio Rancho, they going to build a gas station there.

Q The salesman told you he owned land across the street and --

A Well, he bought this land and next year, when time is good form, then he move over there and start building a gas station.

Q Has that gas station been built yet by today?

A Is nothing there.

(Government Exhibit 1407--B marked for identification)

Q I show you what has been marked Government Exhibit 1407-B for identification, and ask if you can identify this (handing).

A Yes, I do.

Q Is this the contract for the two multiple dwelling lots?

A Right, 11-V.

MR. KAUFMAN: The government offers 1407-B.

MR. SPRIZZO: No objection.

(Government Exhibit 1407-B received in evidence)

MR. KAUFMAN: Again, you Honor, if I may just refer to this briefly.

THE COURT: You may.

(Mr. Kaufman read from Government Exhibit

1407-B in evidence to the jury)

Q Mr. Mols, did you continue to attend dinners in the spring of 1967?

A I did.

Q Did you buy more land at those dinners?

A I did, yes.

Q How much more land did you buy?

A I bought in my wife's name two acres in eight more, because they told me --

Q Just tell us for now how much more land you bought.

A Two acres more.

Q In Unit 8?

A In Unit 8.

Q Did you buy any more land?

A Yes, I do.

Q Tell us about the additional land.

A Then I bought three acres in 7 again -- that is Unit 7.

Q Did you buy any more land?

A No more. I all together got six acres in 7, six acres in 8 and multiple lot in 11.

(Government Exhibits 1407-C, D and E, respectively, marked for identification)

xxxxx

Q Mr. MOls, I show you what has been marked 1407 for identification, and ask if you can identify this.

A 1407? What do you mean?

Q This number up here. Can you identify the document?

A Yeah I do that.

Q That is your signature on here?

A And my wife's. You know, my wife's name is first and I'm second this time.

Q Is this the contract for --

A That is the contract, yeah.

Q For an acre in --

A One acre.

Q I show you 1407-D.

Can you identify this?

A Yes. The same thng, my wife first and I second.

Q Is this the second acre that you bought on the same night in Unit 8?

A That we did.

Q I show you 1407-E for identification, and ask if you can identify this (handing).

A Yeah.

Q Do you see your signature?

A Right, right.

Q Is this the contract for three acres in Unit 7?

A Right, sure.

MR. KAUFMAN: The government offers C, D and E.

MR. SPRIZZO: No objection.

(Government Exhibit 1407-C, D and E, respectively, received in evidence) xx

MR. KAUFMAN: Again, your Honor, I will just briefly refer to these.

(Mr. Kaufman read from Government Exhibits 1407-C, D and E, respectively, in evidence, to the jury)

Q Mr. Mols, were there another three acres of land that you purchased in Unit 7 for which you do not have a contract?

A I couldn't, because I gave it to the office --

Q Just answer the question.

Are there another three acres of land which you bought in 1967 that you don't have the contract for?

A Yes.

Q Why did you buy all this additional land in the spring of 1967?

A I was invited to a dinner, free, because I was a good customer. Any dinner was in the vicinity I can't go without asking and I want to find out how the system works, with the raise all the time, with --

Q Mr. Mols, my question is, why did you buy this additional land?

A For investment.

Q I believe earlier you testified about a discount.

Can you tell us what that was?

A Oh, yeah.

If you got two acres or more, then you got a discount on the gross pay of what you bought.

In other words, when I got six acres, I got only coming in hundred back.

Q How much was the discount after you had six acres?

A $100 for two acres or more on one person. My wife is another person and she buy two acres, then she got another $100.

In other words, that's why I got two acres in my name and the rest is in her name to get $200 back.

Q And all these dinners that you went to in 1966 and the spring of 1967, were statements made about the price of the land going up?

A Really, the papers were changed in May 1967-- I think May, can be June, I don't know exactly now, but that year was changed $600 each acre.

Q In 1967 the prices did go up?

A Yes, the price did go up on the dinner for all the people.

Q And after the price went up, did you think you had made money on your investment?

A Yeah. I make $7,000, $200 on paper.

Q Did somebody tell you that?

A Twelve times six.

Sure. One day I walked in and a salesman told me, "You see, you're lucky, you bought all that land. Look what money you made."

He show me the new prices. I was happy.

Q Did you ever visit Rio Rancho?

A In July 1967.

Q How did you go out there?

A By Greyhouse bus, because I don't pay fare to go look at the land. You got to pay it out of your pocket. I took the Greyhouse bus. It's the cheapest.

Q Did you go by yourself?

A Yeah.

Q And where did you stay?

A In Casa Blanca on Central Avenue in motel.

Q Did you inform the Rio Rancho people that you were coming to Albuquerque?

A They -- three, four days before by the phone.

t

Q Did you go to Rio Rancho within six months of your first purchase?

A I did not. I couldn't. I got no vacation while I'm on the job.

Q Were you aware of your six-month cancellation privilege?

A I was.

Q And did you inform Rio Rancho that you could not go to Rio Rancho within six months?

A I did.

Q And did Rio Rancho extend your visitation privilege?

A They did.

Q Until you culd go in July?

A Yeah, right, when I got my vacation.

Q Did you visit your land when you went to Albuquerque?

A Yes.

Q How did you get from your motel in Albuquerque out to Rio Rancho Estates?

A I was in the motel, they told me, "We will take care of you when they arrive."

They never were there at the station when I --

Q Mr. Mols, my question is, how did you get from the motel to Rio Rancho Estates?

A With the salesman.

Q A salesman picked you up?

A He did.

Q And did the salesman drive you out to the property?

A Yeah, all over.

Q And did you see all the different parcels of land which you purchased?

A Yes, I did. They told that is here, that is there, yes.

Q About how long did it take to drive around and see the different parcels of land which you bought?

A Includes about two hours talking back and forth.

Q Did he show you your land in unit 7 and in unit 8 and in unit 11?

A He showed everything what I bought, but I was not content with three acres in 7. It was in --

Q We will get to --

A I'm sorry.

Q Was there any difference between the different parcels of land which you owned?

A Yeah. One is flat, the other is on a hill and the other one is down hill (indicating).

Q There are ones in a gully or a ditch?

A Something like that, yeah (indicating).

Q Other than those differences, were there any other differences in the land?

A No. It was all desert.

Q With respect to the land that was in the gully, what happened with respect to that piece of land?

A I told the salesman that I don't like that, because you see Albuquerque there on the hill, look down and see Albuquerque and say I can't see nothing here.

Q And what did you say?

A And I wanted to change it.

Q What did the salesman say?

A "Yeah, we bring you to Mr. Sommerthal, vice president."

Q Would that be Sommerholder?

A Sommerhall, Sommer --

Q Sommerholder.

A Sommerholder, that's it.

Q Who was Mr. Sommerholder?

A He was the vice president, they told me.

Q Did you say to see Mr. Sommerholder?

A I did.

Q Where did you see him?

A In his office in central office, though at that time it was the main office, in central office.

Q The Rio Rancho office was in Albuquerque at that time?

A Yeah, Central Avenue.

Q Did you have a conversation with Mr. Sommerholder about your dissatisfaction with the unit 7 land?

A Yeah, a long time.

Q And what did you say to him and what did he say to you?

A I told him my story, I don't like in 7.

He say, "No problem. Where do you want it?"

He showed all what was available, and I liked 13, it looked good and I liked 9, was close to 16. I was thinking maybe one is worth more than the other.

He say, "Okay. It cost you $200 a lot more for 13 and cost you $400 a lot more for 9, and because that is the corner" --

Q Because it is what?

A On a corner lot.

Q On the corner.

A -- "you pay another $400 more."

Q So you had to pay $800 more for an acre in unit 9?

A Right.

Q And you got two acres in unit 13?

A Right.

Q At an additional cost?

A $400 altogether, $200 each.

Q Once you traded in your three acres in unit 7 for the two acres in unit 13 and the one acre in unit 9, did you indicate that you were satisfied with all the land that you had at that time?

A Yeah, as far as I know, I no know better.

MR. SPRIZZO: Can I have that answer read back, your Honor? I didn't get it.

THE COURT: Read it back.

(Record read.)

MR. SPRIZZO: I move to strike the last portion of that answer as being unresponsive to the question.

THE COURT: Overruled.

Q The three acres in unit 7 that you traded in, are those the three acres of land in unit 7 that you do not have a contract for now?

A Right.

XXX (Government Exhibit No. 1407-F marked for identification.)

Q I show you what has been marked as 1407-F for identification, and ask if you can identify this (handing).

A Right. Yeah.

Q See your signature?

A Yeah, I see it.

Q Is this the document you signed to exchange unit 7 into unit 9 and 13?

A Yeah, in Albuquerque, in office.

MR. KAUFMAN: I offer 1407-F.

MR. SPRIZZO: No objection.

XXX (Government Exhibit No. 1407-F marked for identification received in evidence.)

MR. KAUFMAN: May I just refer to this briefly, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 1407-F in evidence to the jury.)

Q By the way, was one of the acres that you received in that exchange a bit larger than an acre, Mr. Mols?

A 9 was -- in 9 is one acre point 16, I believe.

Q Do you know how big Rio Rancho was then, in 1967?

A What?

Q Did you know how big Rio Rancho was in 1967?

A That's the first time I saw it, in 1967.

Q Yes. Did you know how big it was in terms of acreage?

A No, I don't know. I had no idea.

Was 50,000 acres, they told me. They told me was 50,000 acres.

Q Who told you it was 50,000 acres?

A Mr. Sommerholder.

Q Did he tell you how big Albuquerque was in terms of acreage?

A No.

Q How big is Rio Rancho now, if you know?

A I can't tell. It's lots bigger, but I can't tell. I don't know. I'm not that familiar with that.

After in certain time --

Q Wait, Mr. Mols.

Is it bigger now than it was in 1967?

A Yeah, I can say that.

Q After you returned from Albuquerque back to New Jersey, did you continue to attend Rio Rancho dinners?

A Till 1973 I was there. There were four, five times I went to the dinner. I got a pass to go through.

Q From 1967 to 1973, you went to about four or five dinners per year?

A Yeah, yeah.

Q Did you ever buy any more land at any of those dinners?

A No, no.

Q Why did you go to those additional dinners?

A To look at the prices and advancing, almost promising another film next time and none came out.

Q When you say to look at the prices, what do you mean?

A The sheets, what they gave you. There is a sheet on units, the lots all the time on the tables for everybody to look to what it cost, and I look to and think I make money again.

Q Were the prices going up?

A Oh, yeah, gone up like hell.

THE COURT: We will suspend for lunch. Return at 2:15, please.

(Luncheon recess.)

***

AFTERNOON SESSION

2:15 P.M.

(In open court - jury not present)

THE COURT: Who has an application?

MR. LAVINSKY: I do, your Honor. Should I wait for a moment until the rest come in?

THE COURT: Yes, that would be a good idea, unless they are going to object.

MR. LAVINSKY: Well, there may be some objection.

(Pause)

MR. LAVINSKY: Your Honor, there is a witness that we have been attempting to see for a period of time by the name of Ralph Avellant who is a co-author of the Kenninger Report, one of the planning reports of significance in this case.

Mr. Avellant had an appointment with me, I had spoken with him several times over the phone, for tomorrow evening.

He was going to be coming in from Washington and meet with us starting at 7:00 o'clock in the evening.

I received a phone call this morning that he could not see us. I called him to find out what had happened. He told me he had spoken to Ms. Hynes to report that he is going to be meeting with me and that she said, well, I had asked you to come in on Saturday and Sunday and originally you had said that you were busy Saturday, now you are seeing them, I want you to come to see me at 7:00 o'clock on Saturday evening.

As a result of which Mr. Avellant called to tell me that he could not see us.

Now, this is not the first itme. We had originally been scheduled to meet with this gentleman in the afternoon of October 8th when he was being interviewed by the government.

The government managed to keep him so late that he could not see us, for which he apologized profusely and we have managed to see this gentleman for about twenty minutes several days earlier than October 8th and we have been trying to see him ever since without avail.

I submit, your HOnor, that we are being preempted. Mr. Avellant said, when I said we asked you first, he said, yes, but they subpoenaed me.

Now, that is the situation. It is vital that we see this gentleman and we are being block from seeing him.

THE COURT: Subpoenaed him how, you cannot subpoena him -- for trial I suppose you could subpoena him.

MR. LAVINSKY: We did not subpoena him. The government has subpoenaed him. We are simply trying to see him.

Now the government says that they have to see him at 7:00 o'clock on Saturday so we cannot see him.

THE COURT: If you had the first appointment, you keep the first appointment.

MS. HYNES: Your Honor, they didn't have the first appointment. The point is that Mr. Avellant was contacted, was asked to come up on Saturday. He was going to try to make arrangements to come up on Saturday. The last time I spoke to him he said he thought the earliest he could get up was Sunday. He called me today and said I am coming up Saturday.

I said, fine, we have to talk to you on Saturday and Sunday and then he said well, I have been contacted by defense counsel and he said they would like to see me on Saturday.

I said I previously asked you to come up both Saturday and Sunday and he said, I know, and he said, I agree I have a prior commitment with you and I will cancel the appointment with defense counsel.

THE COURT: When is he going to be put on the stand?

MS. HYNES: Either Monday or Tuesday.

THE COURT: No way. The defense are going to have full opportunity to talk to him.

MS. HYNES: I doubt we will reach him on Monday.

THE COURT: I don't care when you reach him. You don't reach him until the defendants have had full opportunity to talk to him.

MR. LAVINSKY: Your Honor, he said to me --

THE COURT: He can be with the government Saturday and Sunday and you will have him Monday and Tuesday and he won't go on unitl you inform the Court that you have finished your conversations with him, that is all.

MR. LAVINSKY: Thank you very much, your Honor.

THE COURT: Get the jury.

MS. HYNES: Your Honor, can I just make one further statement in clarification.

Since your Honor is requiring us to go forward with this brief on Monday, I expect to meet with Mr. Avellant on Saturday evening and Sunday. We may have to do it a portion of Monday as well. I will not call him until defense have had whatever opportunity they want to talk to him, but if I still have to speak to him on Monday, I just want to be clear that I am trying to do both the brief and speak to Mr. Avellant.

THE COURT: I am sure there are a lot of other witnesses around and Mr. Kaufman and Mr. Devorkin can take other witnesses and put them on the stand.

MS. HYNES: Yes, I agree. I am just simply saying that if I still have to speak to him on Monday, I don't want to be taken as violating your Honor's directive. We will not call him until the defense have had an opportunity to speak to him.

THE COURT: Fine.

(Jury present)

GUSTAVE MOLS, resumed.

THE COURT: You may continue.

MR. KAUFMAN: Thank you.

DIRECT EXAMINATION CONTINUED

XXXX BY MR. KAUFMAN:

Q Mr. Mols, when we broke for lunch we were talking about the four or five dinners that you attended every year between '67 and '73.

How did those dinners compare in terms of what was done and what was said at the different dinners?

A Most of the time it was the same slides and the same few slides --

THE COURT: Come on, Mr. Kaufman. I ruled all that out. We have heard that from twelve separate witnesses.

MR. KAUFMAN: Your Honor, I wasn't going to get into the details.

THE COURT: Don't ask the question. This jury has heard fifteen witnesses describe this to them.

Q At any of those dinners, Mr. Mols, did you learn anything about the amount of land that Rio Rancho had left to sell?

A No.

Q At the early dinners that you attended, do you recall how many units there were in Rio Rancho?

A Seventeen.

Q Did there come a time during your attendance at these dinners that there were more units available at Rio Rancho?

A Yes.

Q Do you recall how many units there were when the number of units increased?

A There was on the top 26 or 27, I don't know. There were plenty more.

Q What year was it that you decided to move to Rio Rancho?

A In 1972.

Q What happened?

A A sales lady came to my apartment and told me they had only fifteen days to go before the price of hte lots was going up 20 or 25 percent and I signed now and I gave $250 down and then I confirmed the sale.

Q Where did you have to go to confirm the sale?

A No, they came to my house.

Q They came to your house?

A With the papers.

Q Did you pay $250 down at your down?

A $200 or $250, something like that

THE COURT: What did you pay this for?

THE WITNESS: For the contract, she showed that I have got the right to come afterwards to buy the house.

THE COURT: To buy a house?

THE WITNESS: Yes.

Q Was this a binder to reserve a house for you at current price?

A Yes.

Q Even after the price would go up later on?

A Right.

Q Sometime after this saleslady came to your house and you signed the papers, did you go to Rio Rancho?

A Yes, I did in June. Called a fly and buy.

Q Of 1972?

A Yes.

Q Do you know what the fly and buy program was?

A Yes. When I go over there it costs $600 I have got to pay and I subtract that from the amount that I have to pay for the house. I had to pay first the $600 myself.

Q If you had not bought a house, what would have happened?

A Then I lost my $600.

Q Where did you stay when you went to Albuquerque in June of '73?

A Panorama Inn was the name.

Q Was it still called Panorama Inn?

A No, it is Rio Rancho Inn now.

Q It had been about five years since you had last been to Rio Rancho, is that right?

A What did you say, sir?

Q It was approximately five years since you had last been to Rio Rancho?

A From '67 to '72, yes.

Q Had there been any growth at Rio Rancho in those intervening five years?

A Yes.

Q What growth did you see?

A There was built in Corrales Heights that was not included in the units, land for Rio Rancho to sell, you can buy no land there, they have to buy a house otherwise they cannot go there.

Then there was also Unit 11, 16 was all ready at that time.

endt

THE COURT: Wait, 16 was already at that time what?

THE WITNEWS: In 1967, it was already built.

THE COURT: It was built?

THE WITNESS: Lots of houses there, yes.

THE COURT: In 1967?

THE WITNESS: Yes.

Q Was that theonly development there in 1967 in terms of houses?

A So far as I know, yes. So far as I know.

Q In 1972, there were houses in Corrales Heights?

A And unit 11.

Q And unit 11. Was that development in unit 11 anywhere near where you owned your multiple-dwelling lot?

A Yes, I have gotten a multiple-dwelling in 11 that is not developed. I mean apartments.

Q I am asking you are the houses in unit 11 near where your multiple-dwelling lots are in unit 11?

A Yes.

Q About how near is your land to where the houses are?

A Lately I got no interest any more. I don't know. I can't tell. I can't say mileage. Maybe, I don't know, I can't tell.

Q Comparing 1972 with what you had seen in 1967, had development gotten any closer to your land in unit 7 and unit 8 and unit 9 or unit 13?

A No.

MR. ARKIN: If your Honor please, is that one question or a series of questions, several units.

THE COURT: I thought he embraced all and the witness answered as though he were asked about all.

Q How long did you stay at Rio Roncho on that trip?

A Three days.

Q What did you do there?

A Walked from Panorama Inn to the shopping center and went to the motor lodge, there were three or four motor lodges on the corner, I know the name now.

Q What was the name?

A Sabina Grande.

Q What is a Sabina Grande?

A A street. Then on the corner from 528 and Sabina there were model houses.

Q Model houses?

A Yes.

Q Was that Corrales Heights?

A Yes.

Q Did you decide on a house to build?

A Yes.

Q How much did the house cost?

A The house itself cost $19,940.

Q That is just the house itself?

A The house itself, no land.

Q Did you build your house on land that you had previously purchased in 1966 or '67?

A No.

Q Did you exchange some of your land for land to build on?

A I exchanged a half acre in 7.

Q You exchanged a half acre in 7 for what?

A I gave it to them and I got a quarter acre in the back in the Corrales Heights.

Q A quarter acre in Corrales Heights?

A Yes.

Q Did you have a conversation with anyone at Rio Rancho in connection with making this exchange?

A With the salesman. He told me what I can have.

Q Tell us that conversation as best as you can recall it.

A I asked him, have you got some land in 11 because it was developed, too, there were a lot of houses there and he said to me, we got no land in 11 because he said all the land in 11 is sold to other people.

Q Why were you asking about land in unit 11?

A Because he told me how much it cost to live on a quarter acre in Corrales Heights. It was lots higher.

Q Would it have cost more to exchange into unit 11?

A I paid about --

Q Mr. Mols, I asked you would it have cost more to change into unit 11?

A No, no.

Q The salesman told you there was no exchange land available in unit 11?

A Right.

Q Did you ask him if there was any exchange land available anywhere else?

A As far as my knowledge, there was nothing else.

Q What did the salesman say to you then with respect to where you could exchange into?

A He said to --

Q You have to talk slower, Mr. Mols.

A Okay.

THE COURT: I want to get this clear about additional land.

You say you wanted to exchange into unit 11?

THE WITNESS: Yes.

THE COURT: And the salesman said there is no land to exchange in unit 11?

THE WITNESS: Because --

THE COURT: They had sold it all out to other people?

THE WITNESS: Right.

THE COURT: So they didn't have any to give you?

THE WITNESS: Right.

THE COURT: Did you ask him any other place to exchange to?

THE WITNESS: He said to me there is only one way, that is wait a little while, if I remember, and when something comes up, you go over there. He say, right now we develop in Corrales Heights, the whole community and he said you can get what I move there, I have got electricity, gas, water, sewers, everything was underground there. No pillars in the street and all concrete, asphalt roads.

Then he told me that naturally --

THE COURT: Say that last part.

THE WITNESS: He told me that in Corrales Heights the land is expensive, it ran more than the land I gave back to them.

THE COURT: Right.

THE WITNESS: They gave me back $2,630 from unit 7 and I paid $4,150 for Corrales Heights.

THE COURT: My question was, did you try to exchange for land to build any place else than unit 11?

THE WITNESS: No, I did not.

THE COURT: You didn't?

THE WITNESS: There was nothing built at that time.

THE COURT: Did the salesman say to you the only place that you could exchange for was Corrales Heights?

THE WITNESS: Yes, because there was nothing available in 11.

THE COURT: Corrales Heights was the only other place you could go?

THE WITNESS: Maybe I could go on the golf course, but that is private -- that is not in units anyway. The golf course was built, too. There was a new section also and it was too much money, I couldn't do that. The cheaper way was Corrales Heights.

THE COURT: Go ahead.

Q Mr. Mols, how much additional money did you have to pay to exchange into Corrales Heights?

A About $1500.

Q Did you agree to that exchange?

A Yes.

Q When was your house built?

A In 1972.

Q Do you remember when in 1972?

A No. I couldn't, I was not 65 years old.

Q All I am asking you is when in 1972 was your house built, if you know.

A It was finished in November. In '72 it was a dump.

Q When did you move to Rio Rancho?

A In 1973, the 31st of December.

Q Was your house vacant for that intervening year after it had been built?

A Yes.

Q You have lived there now for approximately three years, is that right?

A Right, next month the end of the month.

Q Do you like living there?

A Yes, I do personally.

Q Do you still have your ten and a half acres plus the multiple-dwelling lots?

A Yes, I have.

Q Are you happy about that land that you own?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Have you ever tried to resell you land?

A Yes, I have got contracts of that.

Q About when did you first start to try to sell your land?

A The first time I tried to sell my land was about in the beginning of '75.

Q What did you do when you first tried to resell your land in 75?

A I went to RR Realty and I want to sell the land and they have no land office. They don't sell land, I just rent houses, something like that and resell houses. They told me we have got no office for land here.

Q Is that what you were told at double RR Realty?

A Yes.

Q Where is double RR Realty located?

A On the business plaza in Rio Rancho. The office.

Q Did you go somewhere else to try to resell your land?

A Yes, I went a little bit up to Sunland, a contractor, a builder.

Q Sunland Realty?

A Yes.

Q What happened in Sunland Realty?

A I received --

MR. SPRIZZO: I object to the conversations with the realtor.

THE COURT: Sustained.

A I asked him --

THE COURT: Wait.

Q Did you offer to sell your land to Sunland Realty?

A Yes.

Q Did they buy it?

A No.

Q At what price were you offering to sell your land to them?

A A thousand dollars a half acre.

Q Excuse me, how much?

A A thousand dollars a half acre. A thousand dollars a lot.

(Continued on next page.)

Q And how much was AMREP or Rio Rancho selling equivalent size land at that time?

A The lowest price was about 3,200, something like that.

Q And did Sunland Realty buy your land?

A No.

MR. SPRIZZO: Objection. Asked and answered.

THE COURT: Overruled.

Q Did they buy your land?

A No.

Q Did you do anything else to try to resell your land?

A Then we went in Albuquerque.

Q Where did you go?

A To Carol Lee.

Q Before you went to Carol Lee,did you go somewhere else?

A Yeah. Clack & Hill.

Q What was Clack & Hill?

A That is a land digest, a land digest.

Q Are they affiliated with any real estate broker, do you know?

A No, I don't know that.

Q Have you ever heard of Clif Roonds?

A No, I never heard of that.

XXX (Government Exhibit No. 1407-G marked for identification.)

Q I show you what has been marked as 1407-G, for identification, and ask you if you can identify it.

A This I can't identify.

Q Look inside and see if you can identify that.

A I saw the persons here in a meeting.

Q Can you identify that (indicating)?

A Yes. I got to pay 25 --

Q No, no. Just, can you identify that?

A Yes.

Q Have you turned this over to the government previously?

A I send -- I brought it over now.

Q You gave this to the government?

A Right.

Q And does this contain an ad that you placed?

A Right.

MR. KAUFMAN: The government offers 1407-G.

MR. SPRIZZO: Just the ad?

MR. KAUFMAN: No, the whole book.

MR. SPRIZZO: We would object to the entire book, Judge.

(Pause.)

MR. SPRIZZO: Judge, I have no objection to that ad going in, but I would object to the whole book going in.

THE COURT: Let me see it.

MR. SPRIZZO: I didn't have a chance to see it or read it. We don't think any portion other than his ad is relevant at this time.

(Handing to the court.)

THE COURT: I allow in only this witness' offer.

MR. KAUFMAN: Your Honor, may I inquire a few more questions of the witness and then renew the offer?

THE COURT: What difference does it make? This is nothing he produced. This is a document ostensibly put together by some third party.

MR. KAUFMAN: Your Honor, if I could be heard at the side bar, I do have something I would like to offer on it.

THE COURT: All right.

(At the side bar.)

MR. KAUFMAN: Your Honor, number one, I do believe the witness will testify that this is a digest put out which lists lots for sale in Rio Rancho and other developments.

Number two, defense counsel, when they have previously questioned witnesses in connection with ads for resale, have constantly stressed the fact that the ads presumably did not state that the land could be exchanged in for lots in building areas, and there are a number of ads in this digest for --

THE COURT: But this is something outside. Who is going to verify it? Who is going to stand up and say it's true?

MR. KAUFMAN: What is true, whether or not the digest is a true digest?

THE COURT: Yes. It is like taking a newspaper article and saying, "I want to put this in because this proves the defendants are guilty."

MR. KAUFMAN: The witness --

THE COURT: Objection sustained.

(In open court.)

XXX (Government Exhibit No. 1407-G received in evidence.)

BY MR. KAUFMAN:

Q Mr. Mols, I direct your attention to page 9, the circled portion, and ask if you can identify that as the ad that you ran.

A Right.

MR. KAUFMAN: If I may read that for the jury, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 1407-G in evidence to the jury.)

Q Mr. Mols, were you able to sell any of your land because of that ad?

A No.

Q Did you go to any other realtors to try to sell your land?

A Yes, yes.

Q I believe you mentioned Carol Lee?

A Carol Lee in Albuquerque some place.

Q And did you go -- when was that, by the way? Do you recall?

A I got the contract. I can't remember the dates.

MR. KAUFMAN: Mark this, please, 1407-H and I, respectively.

XXX (Government Exhibits 1407-H and I, respectively, marked for identification.)

Q I show you 1407-H and I for identification, and ask if that refreshes your recollection when you listed your land with Carol Lee?

A Yes.

Q About when was it?

A The date was some place.

Isn't it written down where the date is?

The 16th of May, 1975.

Q And did you list some property with them again a few months later?

A Yeah. This was 7/28/75.

Q And with respect to that realtor, did you list separately your land and your land plus your house?

A Not on that time, no, because this all together.

See, the price over here is house and the land together.

Q Referring to 1407-H for identification, does that refresh your recollection what you listed?

A This was the house and all the land I got, included.

Q And 1407-I, was that just the land?

A Just the house.

Q Just the house?

A I was tired of everything, I think I sell the house, too, by itself, forget the land.

Q And did you go to another realtor after that?

A Yeah.

Q Do you remember the name of that realtor?

A Is on the paper. I cannot remember.

(Pause.)

Q Was it Town & Country Realty?

A Right, right. And the sales lady lives in Paradise Hill.

Q And was that in 1976, when you went to Town & Country?

A The date is there, 20 July -- still running -- 1976.

Q Did you list your land separately with Town & Country Realty?

A I did.

Q Did you receive any offers for any of your land?

A No.

Q Have you sold any of your land?

A Since then, no.

MR. DEVORKIN: No further questions.

THE COURT: Who is going to cross examine?

MR. ARKIN: Mr. Sprizzo.

Mr. Arisohn will also cross examine, your Honor.

XXX CROSS EXAMINATION

BY MR. SPRIZZO:

Q Mr. Mols, I show you Government Exhibit 1407-G, which is the ad you placed in the Clack & Hill land digest.

A Right. That's the one.

Q Is that your language?

A No. I speak English, right?

Q I mean, is the language which appears in this ad language you told them to print?

A Yeah.

You see -- I see your point.

They gave me -- my English is not that good and people don't make up the ad like that people, and they gave me a list of all kinds of ads and I got to show which one is good for me, and I found that the best for me.

Q So the language was language you chose?

A Except the half acre on the current price and a half acre for nothing afterwards, that's what I said that I put down.

Q But I mean, the language of the ad is language you authorized to be printed?

A Yeah. This one, I put this down myself because --

Q Which part of it did you put down yourself?

A I put down myself "buy half acre at current developers price and get half acre free."

Q What about the other part of the ad?

A Believe it or not, I don't put that down, because I put it down because they have something in front of me or it got to start --

Q But you read it before you authorized them to print this for you?

A Sure, I do.

Q And you authorized this language to be used?

A Yes.

Q And this language that appears in here about booming Rio Rancho, did you believe at that time Rio Rancho was booming?

A No. The guy -- that was booming Rio Rancho, that was already in the --

Q But you authorized this ad to be printed, did you not? This was printed at your request and on your behalf?

A They gave us simple ads, except I put my own.

Q Did you believe this ad constituted a misrepresentation?

A To me, yes, insofar as I think it still lie, half acre half,acre free.

Q No. I am talking about this language, "Save dollars on these one half acre lots on booming Rio Rancho." Did you believe that to be a misrepresentation when you inserted this ad?

A I see your point.

Q I want to find out if you were telling the truth to the public.

A Right.

Q Were you telling the truth?

A The truth was I gave half acre free and half acre --

Q This entire ad was printed at your request?

A That was set for me up. I don't make the ad up.

(Continued on next page.)

THE COURT: But you accepted it?

THE WITNESS: Oh, yes, sir.

Q But you accepted that?

A Yes.

Q You authorized --

A Oh, yes, that's right. I see what you mean.

Q -- an ad to say to the public, "Booming Rio Rancgo"?

A Yes.

Q And my question to you was, did that represent in your mind a misrepresentation?

A That's what I told a lot of people make a lot of profit on it if they take it.

Q In other words, you were trying to sell your property even if you had to puff a little?

A Half the price and less, right.

Q Mr. Mols, you were at one time a wholesale butcher in Belgium, were you not?

A I was.

Q Was that your occupation before you came to the United States?

A Right.

Q Was that a profitable business?

A It was.

Q Did you make a lot of money?

A Enough.

Q You testifed on your direct examination that Rio Rancho was bought for investment, is that correct?

A What is this?

Q That you bought Rio Rancho for investment.

A Right.

Q Did you have any other investments at that time?

A No.

Q You didn't have any money in the stock market?

A No. I don't believe in stocks. I got -- I got in Belgium in the bank and I got it over here.

Q So you had all your money in the bank in Belgium?

A Not all. I got some savings here. You can verify that. Two people, me and my wife, are working, both of us, and my wife was a cook in a rectory, if you understand that.

Q My question is, did you have any other investment in any other land?

A No.

Q No other investments in any stocks or bonds?

A No.

One thing I do, before I left for America I sold a house in Belgium for $24,750.

Q How much did you pay for that house?

A I paid, that house, about $20,000 that time, I built it.

Q So your investment in land in Belgium was a profitable investment, was it not?

A The point is --

Q No, no. Answer my question yes or no.

A What?

Q It was a profitable investment, was it not?

A In Belgium, yes.

THE COURT: Where did you live in Belgium?

THE WITNESS: In Castelay. That is in Provincia Antwerp.

THE COURT: In Antwerp?

THE WITNESS: In the Provincia. In the state there are nine provincias and that's one of them, Antwerp is one of them. About 40 kilometers from Antwerp; about 30 miles from Antwerp.

Q When you were living in Jersey, were you renting or did you own a house in Jersey?

A I came in a contract in America from a big restaurant as butcher.

Q No. When you moved to Jersey, did you buy a house in Jersey?

A No. I told you, I lived in the restaurant because I was with a contract came over here.

Q Did you ever at any time buy a house in New Jersey?

A No.

Q You rented all those years?

A I don't have to buy house because we lived in most of the time by people.

Q Did you at some point in time become the controller of a company in Belgium?

A What you say, sir?

Q A controller of a company in Belgium, a photographic company.

A No. Don't misunderstand, controllitz means you look to the merchandise and find out is the right stuff before it is shipped.

Q When you bought this land at the sales dinner, Mr. Mols, you were aware, were you not, that you were taking some risk?

A Not me. I was not taking a risk that time.

Q You weren't aware that the land you were buying was a speculation?

A No.

Q That you could win and you could lose?

A I don't think. I think I was thinking I could win.

Q Did you receive a property report at the time you bought your land?

A I did, afterwards, but I never look it. I really did not.

MR. SPRIZZO: Would you mark this with the next number.

(Defendant Chester Carity and Daniel Friedman Exhibit DN marked for identification)

Q I show you what has been marked DN for identification, Mr. Mols, and ask you if you can identify that (handing).

A I don't deny I got that because I don't even remember it, sir.

Q Isn't it a fact that these papers were produced by you to the government?

A It's possibility, sir. I don't know. I don't remember.

Q Is that not a fact?

A I don't remember, sir.

MR. SPRIZZO: Will the government agree that this document comes out of a file provided by the government?

MR. KAUFMAN: Yes, we so agree.

MR. SPRIZZO: And this represents documents provided by Mr. Mols?

MR. KAUFMAN: That's right.

MR. SPRIZZO: I offer this in evidence.

THE COURT: Any objection?

MR. KAUFMAN: Just one or two questions on voir dire.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q Mr. Mols, do you have any idea at all when you received this?

A I think so.

THE COURT: Pardon me. That is not proper voir dire. It may be cross examination -- wait -- but it is not proper voir dire.

MR. KAUFMAN: I have no objection.

THE WITNESS: I remember something on that. I don't recall.

(Defendant Chester Carity and Daniel Friedman Exhibit DN received in evidence)

CROSS EXAMINATION CONTINUED

BY MR. SPRIZZO:

Q This bears the date 2/11/65.

Do you have any idea how long you had this document, Mr. Mols, in your possession?

A Sir, I just tell you before --

Q Will you answer my question.

A Yes. I don't remember when I got it. All I know I got it afterwards when I got the land a long time, not -- a long time after.

Q Did you ever read it?

A No, I did not.

MR. SPRIZZO: I would like to read certain portions of this to the jury.

This is a property report which is required, I think the government would accept my representation, by the State of New Jersey.

MR. KAUFMAN: What is the exhibit number?

MR. SPRIZZO: Exhibit DN, and this came from Mr. Mols' possessions.

(Mr. Sprizzo read from Defendant Exhibit DN in evidence to the jury)

MR. SPRIZZO: Will you mark this the next number.

(Defendant Chester Carity and Daniel Friedman Exhibit DO marked for identification)

Q Mr. Mols, I show you DO for identification, and ask you if you have seen that and can identify it (handing).

A I don't remember, sir, really.

MR. SPRIZZO: Would the government, again, accept my representation that this was produced from documents provided by you?

MR. KAUFMAN: Yes.

A I don't remember. I'm sorry.

MR. SPRIZZO: I would offer this one in evidence.

MR. KAUFMAN: No objection.

(Defendant Chester Carity and Daniel Friedman Exhibit DO received in evidence)

x

Q Mr. Mols, you did testify, did you not, on direct examination that you sold one of your lots?

A Right.

Q It was one acre, isn't it?

A One acre, yes.

Q Which is two lots?

A Yes.

It was made one acre lot. In other words --

Q How much did you pay for the acre you sold?

A That was the -- with big discount because it was the twelfth in line, nine, ten, eleven, twelfth in line. It was the last I bought. You will see that on the papers. That was '67, just before they close up that next month is supposed to be $600 on the top and they told me, "If you grab it and you got it now and they got so much discount allowed" --

THE COURT: Wait.

Now, look, just listen very carefully to the question. It is Friday afternoon and we want to finish with you so you can go home and enjoy the weekend in the sunny southwest. All right?

If you just answer the questions, we will be finished much more quickly. All right?

THE WITNESS: Yeah.

THE COURT: Fine.

Now, the question to you was, how much did you pay for the acre you sold to your friend's friend? How much did you pay for it?

THE WITNESS: I paid $1750 an acre at that time.

THE COURT: $1750 an acre.

Q And your testimony was, I believe, on direct examination you sold it for about $3600?

A Yeah, less the cost, yeah, the title company.

Q When did you sell that?

A In 1975.

Q So this was at about the same time you were trying to sell your other lots?

A No. In 1975, I start in May, if I remember. I tried.

Q When did you sell this lot?

A April, I think, April or May.

I was lucky. He wants land because --

THE COURT: Wait a minute.

THE WITNESS: I am sorry.

THE COURT: Remember, you promised me.

THE WITNESS: I am sorry. Sorry.

A I can't remember exactl, the sale, but got to be before May.

Q Before May?

A Before May '75, yes.

EOjw 1 Mols - cross

Q As I recall your testimony, correct me if I am wrong, you told the prospective purchaser that he should go out and see what Rio Rancho was selling it for and you would sell it for less?

A Less than half the price, yes.

Q Selling it for less than half the price that Rio Rancho was charging, you still made about 100 percent profit on your investment, did you not?

A Right.

Q You were able to compete with Rio Rancho very successfully, were you not?

A I was lucky. I call that luck.

Q The house you have in Rio Rancho, you are presently living in Corrales Heights, is that correct?

A Right.

Q That house cost you between $19,000 and $20,000?

A $19,440 except --

THE COURT: With the land, how much for the land?

THE WITNESS: $4,150.

THE COURT: Making a total of $23,000-odd.

THE WITNESS: $23,550.

THE COURT: The witness has corrected me. $23,550.

Q Is that house fully paid for?

A Yes.

Q You paid it in effect in cash, did you not?

A In period by period.

Q Over what period?

A The first month so much, the second time so much, the third time so much and the fourth time the leftover.

THE COURT: How long did it take you to pay it up?

THE WITNESS: From the start.

THE COURT: Yes.

THE WITNESS: To the end.

THE COURT: How long?

THE WITNESS: Four months.

Q In short, Mr. Mols, it took you as long to pay for the house as it took them to build it?

A Yes.

Q You were making progress payments on the house?

A As soon as progress.

Q So in addition to the $27,000 you invested in the land, you put another $19,000 into the house?

A Right.

Q I believe you testified on direct examination that you went to a lot of sales dinners, isn't that correct?

A A lot of?

Q A lot of sales dinners?

A Right.

Q You went in '66 when you first bought the property. You went again in '67.

A To '73.

Q And as of '67, sometime in July of '67, you inspected your property, isn't that correct?

A Yes.

Q You went out and saw your property?

A Yes.

Q You didn't like some of it, right?

A Yes.

Q The part you didn't like you traded back to the company and got other lands?

A I don't want -- then I look at the hill because the salesman told me on the hill you see Albuquerque.

Q Then you signed a little piece of paper which said you were satisfied with your property, did you not?

A Yes, I did.

Q At that time --

THE COURT: Mr. Sprizzo, between you and the witness.

MR. SPRIZZO: I know. That is exactly what I was thinking of this morning.

THE WITNESS: I speak fast, but you speak fast too.

MR. SPRIZZO: Southern Europeans.

Q At the time that you visited the property, you were satisfied with your land, were you not?

A Right.

Q Then after that you continued to go to sales dinners?

A Yes.

Q Did you enjoy them?

A I look at the prices and it went up every month or every six months. It was higher and higher, I was happy.

Q The prices kept going higher and higher and higher?

A Higher and higher.

Q You still didn't buy any more land?

A No, because I couldn't afford any more anyway.

Q By the way, you said you had some money in the bank in Belgium.

Do you have any money in any Swiss banks?

THE COURT: Maybe in Jamaica. They have got another bank in Jamaica.

Do you want his numbered account, Mr. Sprizzo?

THE WITNESS: Sir, may I answer that question?

THE COURT: Wait.

THE WITNESS: I am sorry.

THE COURT: I am sorry, I am adding to the delay here. Let's get on with this, Mr. Sprizzo.

Q No?

A My wife is Belgium, sir. She is not an American citizen because in case something happens to me, she is right where she belongs. We have no children.

Q I take it you don't have any money in a bank in Switzerland.

A Not in Jamaica either.

Q Were your relationships with the company always on a friendly basis, Mr. Mols?

A With my company?

Q With AMREP.

A Oh, yes, I was invited all the time. I was ambassador. Do you know what that means, an ambassador.

That means they give me a paper that says ambassador. In case you sell ten half acres you got one free. They want me to sell for them. I never took it. I don't want no part of that.

Q You wrote them a lot of letters over the years about your property, did you not?

A Once in a while. Not a lot, when something is wrong. Twice a check I want them back, something is wrong.

Q Then they would write you back letters, right?

A They do, yes.

Q I think at one point you told them that the sales dinners in New Jersey weren't quite as interesting as they used to be because all the people had complained and you didn't know anybody anymore?

A Something like that.

Q You were having a good time at these dinners?

A Sure, and I was looking at all the sales sheets with the people. When I saw land --

THE COURT: Wait.

THE WITNESS: I am sorry.

Q You never complained to AMREP, did you, during the period from 1967 through 1973 or '74?

A No, I never did.

Q That you had been defrauded?

A No, I was sure I was in the right place.

Q You never claimed you had been defrauded?

A I told them it was the best company in America.

Q You never claim you were victimized or cheated?

A No, I had no idea of that. I was perfectly happy.

Q In fact you never really complained about being cheated until you were contacted by the United States Attorney's office?

A No, before I came to live over there.

t

Q It wasn't until you were contacted by the U.S. Attorney's office that you first thought you were cheated?

A No, I don't even know -- this is before I came there and the people and the neighbors that tell me the truth what I don't know.

Q As a matter of fact, you were such a frequent attendee at sales dinners that is it not true that you had a list of places where the sales dinners were going to be held?

A Yes.

Q They gave you a schedule?

A That's right. I was thinking that I was just a puppy for them. I was wrong. I was a dummy.

Q You weren't buying any more land, were you?

A No, I want to see the prices going up all the time. I don't enjoy the dinner. I have plenty food at home.

Q After '67 you weren't buying any more land?

A No more. I have got plenty.

Q Nobody from AMREP said don't come to the dinners no more because you don't buy more land?

A No, they say buy more and more. I say look, no more. They want me to buy more but I don't get no more. I have got enough land, I was rich already. I was rich before I came to live over there.

Q You were still rich enough as of '75 to pay $19,000 in full in the house?

A Rich enough. In '68 maybe two years I can spend every penny I have got. I am 68 years old. I have got a cancer operation six months ago.

Q You testified --

A I am still here, you are lucky.

Q You testified on direct examination -- did you testify on direct examination that representations were made to you as to when the property would be developed?

A Just now when I bought the house and I moved to Albuquerque and I still like the house. I love the house and I am comfortable. It is dry, that's all I can tell.

Q Let me ask my next question. That was not the question I asked.

A No.

Q The question I asked was when you first bought your property,did you testify that when you first bought your property that representations were made to you as to when the property would be developed?

A Oh, yes. Mr. Sommerholder told me that in his office on Central Avenue.

Q Isn't it true, Mr. Mols, that you knew that this property might not be developed for 10 or 20 years?

A Can I say one small thing?

Q Answer my question yes or no.

A In 20 years it would be grown.

Q 20 years he was talking about?

A Yes, 20 years is past already.

Q He wasn't talking about a short period of time?

A No, 20 years at most.

Q You knew when you bought this land that you were making a long range investment?

A 20 years or more.

MR. KAUFMAN: Objection, your Honor, the witness' testimony is that this did not happen at the time he bought his land.

THE COURT: The witness says that he was told it was 20 years.

MR. KAUFMAN: The witness said Mr. Sommerholder.

THE WITNESS: On Central Avenue. That was the biggest man around at that time.

MR. SPRIZZO: Can I mark -- I guess it was already marked. It already has a number.

Q It has been already marked as 3547-B, which is a document which the government has produced for us as required by law.

A Yes.

Q Will you direct yourself to question 13. Would you look at that. Is that your writing?

A Yes. They told me in 20 years --

Q Don't read it because it is not in evidence.

A I write bad.

Do you want to read for me?

MR. SPRIZZO: If the government has no objection I will read the question and the answer.

Q This is a questionnaire which you received and filled out, is it not?

A Pardon me?

Q Did you receive this questionnaire in the mail?

A I don't remember, sir.

Q But you filled it out?

A That's my writing.

Q Question 13 reads: When you purchased the land what was your understanding about the possibility of resale of this property and the answer in your writing is, yes, they told me in 20 years and I can't -- was it all built up. Does that appear there?

A Yes, that's what I say.

Q That's when you purchased the property?

A Right.

MR. KAUFMAN: There is more to that answer. I think under the rules, your Honor --

THE COURT: Is that the entire answer?

MR. SPRIZZO: It is not.

THE COURT: Read the whole answer.

MR. SPRIZZO: I will read the whole answer but it is not pertinent to my question. There were only 17 units plus a blueprint on the office of the community of Rio Rancho all built up.

MR. KAUFMAN: It is all one sentence and Mr. Sprizzo has picked it up in the middle. I think the whole thing should be read in its entirety.

MS. HYNES: Get the original and you can read the original.

MR. SPRIZZO: This is even clearer. Yes, they told me in 20 years was it all build up, there were --

THE WITNESS: Only 17 units.

MR. KAUFMAN: All built up there.

MR. SPRIZZO: Were at that time only 17 units plus the blueprint on the office of Rio Rancho all built up.

Q My question was, when you purchased the land, what was your understanding about the resale of this property?

A There was a blueprint in the office --

THE COURT: Wait. You promised me.

THE WITNESS: Sorry.

A 20 years was over. 10 years and it was all built up.

Q You didn't purchase most of your land out in New Mexico, did you, Mr. Mols?

A I purchased only in New Jersey. Never I make an exchange in Albuquerque, but I never bought land more. In New Jersey I bought.

MR. SPRIZZO: Nothing further, your Honor.

I have no further questions.

MR. ARISOHN: Would you mark these, please.

XXXX (Defendants Howard Friedman and Henry Hoffman Exhibits DP, DQ, DR, DS, DT, DU, DV, DW, DX, DY, DZ, EA and EB marked for identification.)

THE COURT: Let's have a recess.

MR. KAUFMAN: Your Honor, we have two exhibits the jury can read during the recess.

THE COURT: All right.

(Recess.)

(Continued on next page.)

(In open court in the absence of the jury.)

THE COURT: Yes, Mr. Weidner?

MR. WEIDNER: Your Honor, I asked for a short conference concerning Mr. Perlmutter's testimony.

Your Honor may recall that he testified on direct as to the distribution of the literature book, and Ms. Hynes asked if there were a master distribution list for that literature book, and I believe the witness said yes. I don't have the transcript page in front of me.

We made a best evidence objection and it was overruled.

She went on to ask him who had gotten the book, in effect, basing it on a master distribution list although it was not in front of him, and he had included in the distributees, Mr. Friend.

When I was questioning him and I had, in fact, what was part of the master distribution list, never anticipating, A, would not be confused in identifying it, and, frankly, B, the government would not object to it since I assumed they had seen it before since she asked him about it, the fact is that this exhibit shows clearly Mr. Friend did not get the book.

This exhibit DC for identification --

THE COURT: I don't recall that his testimony on direct was waived on a master distribution list.

MS. HYNES: I don't, either, your Honor.

THE COURT: He says that he gave it to him.

MR. WEIDNER: At page 3327 to 29, your Honor, of the transcript, that is the testimony that relates to this subject.

THE COURT: You are not talking about yesterday?

MR. WEIDNER: No, sir; I am not.

THE COURT: You are talking about two days ago?

MR. WEIDNER: On direct, that's right.

THE COURT: You are a little bit late on it coming in now.

MS. HYNES: Your Honor, I can hand up my copy.

THE COURT: My clerk will bring in the copy.

(Pause.)

THE COURT: 33 --

MR. WEIDNER: 3327.

MS. HYNES: It going on to 3328.

(Pause.)

THE COURT: This book that they are talking about, Perlmutter says he put together in 1972, when there wasn't a promotion list.

MR. WEIDNER: I'm sorry?

THE COURT: Perlmutter testifies that the book he was putting together, which seems to be tied in with the distribution list, was put together in 1972, at which time there was not a master distribution list.

MR. WEIDNER: Your Honor, he is testifying there concerning promotional material apart from this book, and that is at line 18 of page 3328.

However, his answer given above on the same page --

THE COURT: Wait a second. But you turn over to the next page and he corrects his date of publication of that book.

MR. WEIDNER: Yes.

THE COURT: So the book was distributed in 1972, before there was a distribution list, and the witness says he gave the book to Mr. Friend.

MR. WEIDNER: Your Honor, perhaps I didn't make myself clear.

The question that was asked at line 17 on page 3328 was, "Prior to 1973, was there something known as a distribution list for promotional material apart from this book?"

THE COURT: He doesn't believe so.

MR. WEIDNER: Right.

THE COURT: I don't take that to mean there was a distribution list just for this book in 1972.

MR. WEIDNER: He so states, I believe, your Honor, on page 3327.

THE COURT: I am sorry, I said, "If he knows the names on the list, I will take it."

And he says he gave it to him without the need of a list.

All right. Bring in the jury.

(Jury present.)

THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. ARISOHN:

Q Mr. Mols, you testified on direct examination that when you went down to Rio Rancho in 1972 you wanted to build a house in unit 11, is that correct?

A Right.

Q You were shown unit 11?

A No. I got no special idea where.

Q Were you shown unit 11 at that time?

A No. They just told me there is nothing available.

Q Did you see unit 11 prior to that time?

A No. I know there are houses.

Q You knew unit 11 had houses?

A They told me and I believed them.

Q But you did not go to unit 11 to see them?

A I did not, not even so far now.

THE COURT: He says he was told there was no land available for exchange in unit 11.

MR. ARISOHN: I understand that, your Honor.

Q To this day you still have not seen unit 11?

A Not so far, no. I have no interest in it.

Q You know people live in unit 11, don't you?

A They do.

Q You know that people have moved to unit 11 since you wanted to build a house in unit 11, don't you?

A I know nothing about 11, sir. I never saw it.

Q I didn't ask you that.

THE COURT: He says he doesn't know.

A I don't know.

Q Do you know, Mr. Mols, that in unit 11 the utilities are overhead?

A They told me in the office that unit 11 got utilities up the ground.

Q Above the ground?

A Above the ground.

Q And you know also in unit 11 they have septic tanks?

A Yes, I know that.

Q And you know that in Corrales Heights where you lived the utilities were underground, is that true?

A They told me that, too, underground.

Q And you know Corrales Heights has a sewage system?

A They told me that, too.

Q You don't have a septic tank?

A No, sewer.

Q You also testified that you had land in unit 7, is that correct?

A Right.

Q And the lot you sold in unit 7 making 100 per cent profit was in block 61? Do you recall that?

A What?

Q Block 61?

A Yes. 9 --

Q That is lot 9 in block 61, is that correct?

A I sold that, yes, in New York.

Q Did you know that in blocks 54 and 55 of unit 7 today, there are 15 lots which are ready to build on with utilities and water?

A I -- yesterday -- let's see now who it was --

yesterday somebody was waiting with me in the thing and they said there are four houses now. I don't know that.

Q In unit 7?

A I don't know that.

Q You don't know that?

A I was exactly taking it still there.

Q Have you ever been out to unit 7?

A No.

My wife say all the time to me, "Go to the land and visit, ask them to show you land again."

THE COURT: No, wait. You promised. It's 4:00.

Q Mr. Mols, that in addition to the 15 lots which are ready to build on now --

MR. KAUFMAN: Objection. Mr. Arisohn keeps repeating facts --

THE COURT: Sustained.

You made a statement of facts and the witness has denied knowledge. That ends that inquiry.

MR. ARISOHN: If your Honor please --

THE COURT: Proceed.

MR. ARISOHN: I will move on to something else.

Q Mr. Mols, do you have an automobile?

A Yes.

Q A station wagon, isn't it?

A No.

Q You drive from your house in Corrales Heights down Route 528 every --

A I go to Corrales Heights. I don't go to visit Rio Rancho.

Q Did you ever drive down Route 528?

A I go through 528, I go to Corrales, that's an old town, next to Rio Rancho. I like the shirts.

Q Your address is 4712 La Contoura Court in Corrales Heights, Rio Rancho, New Mexico, right?

A Yes.

Q Let me show you what has been marked Defendants' Exhibit DI for identification, and ask you, is that a picture of a house on your block?

A No. This is the next one (indicating).

Q Is this a house on your block?

A Oh, yes, the house on the block.

Q This is the house right next door to yours?

A Right.

Q And that's the way this house looks, right?

A Yes.

MR. ARISOHN: I offer DU.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

The witness says he is perfectly happy with his house.

THE WITNESS: Sure.

Q By the way, Mr. Mols, you listed your house with the Multiple Listing Service of Albuquerque, New Mexico for $34,500, did you not?

A Right.

Q That's what you believe --

A Include the land.

Q That's what you believe the house and the land was worth, didn't you?

A Right, right.

Q Mr. Mols, did you ever drive down from your house in Corrales Heights down Route 528 towards Coors Road?

A I go -- yes, I did.

Q You have passed the entrance gates to Rio Rancho Estates, have you not?

A Yeah.

Q I show you DQ for identification, and ask you whether you can identify that (handing).

A Yes. There was that time there when I came over.

Q This is the way it looks today?

A Yeah, it looks about the same to me, yes.

MR. ARISOHN: I offer DQ.

MR. KAUFMAN: I have no objection.

XXX

(Defendants Howard Friedman and Henry Hoffman Exhibit DQ received in evidence.)

Q Mr. Mols, have you ever driven inside through the entrance gates of Rio Rancho Estates?

A In 1967, when I was in their office, in 1967 I was there.

Q Since then you have not driven inside the gates of Rio Rancho?

A No more afterwards.

Q Let me show you a document which has been marked Defendants' Exhibit DP for identification, and ask you if you can identify that (handing).

A Yes. I got that.

Q You had that?

A That I got, yeah.

Q What is it?

A I don't know. There is Corrales Heights here.

Q What is this document?

A Well, I just concerned -- I don't even know what it is. That is for me, Corrales Heights.

Q Is this a map of Rio Rancho Estates?

A I ask, what is that?

Q Do you recognize this?

THE COURT: Wait. Have you seen that before?

THE WITNESS: I saw the map. I never concentrated, only on Corrales Heights.

THE COURT: But you have seen that map?

THE WITNESS: I did, sir.

THE COURT: All right.

MR. ARISOHN: I offer this DP.

MR. KAUFMAN: Your Honor, we object to at least a portion of it and request a side bar.

THE COURT: Let me see it.

(Handing to court.)

(At the side bar.)

MR. KAUFMAN: Your Honor, we have no objection to the large portion of the map that has a scale on it, with the exception of this marking. I don't know who made that marking.

Our main objection, though, is to this vicinity map which purports to be a map of the whole subdivision, which says that it has no scale.

We would object to that portion.

THE COURT: Objection sustained.

MR. ARISOHN: I will cover up that portion.

MR. KAUFMAN: Whose markings is that?

MR. ARISOHN: I have no idea.

THE COURT: Does the marking add or detract from that?

MR. KAUFMAN: I don't know how it is going to be used.

MR. ARISOHN: It is only to point out the street which he lives on.

MR. KAUFMAN: Fine.

MS. HYNES: You added it, didn't you?

MR. KAUFMAN: It doesn't matter.

(In open court.)

XX (Defendants Howard Friedman and Henry Hoffman Exhibit DP received in evidence.)

CROSS EXAMINATION (Continued)

BY MR. ARISOHN:

Q Mr. Mols, let me show you DP, which is a street index of the southeast portion of Rio Rancho Estates now in evidence, and let me call your attention to the street which is colored in in a pink market, and ask you if La Contoura Court is the same La Contoura Court on which you live?

A Yes, that is La Contoura Court.

Q And could you indicate where your house is on

La Contoura Court?

A At this number 4712 --

Q It is the last one on the house?

A Wait, sir.

It is about the third house in as you come in on the street on the left side.

Q About midway?

A It's not middle, no.

Q Closer to the end?

A The third from the street, I'm in there.

Q And am I correct, Mr. Mols, that the third street --

A No. I mean, the third, one, two, three -- in other words, where you coming from.

Q Let me ask another question.

Am I correct, Mr. Mols, that the third street from your street going in an approximately northeasterly direction is called Sombrerette Road?

A I don't know, sir. I just know where my street is and I go to the street where I go over there and forget all the rest.

Q You never look at any other roads?

A No, I don't observe nothing, no.

Q Do you know, Mr. Mols, that on a street not far from yours, three blocks from yours, there is a house being built now?

A No. There are many houses built. Don't ask me where it is.

Q Let me show you Exhibit DW for identification, and ask if you can identify this picture (handing).

A I think -- I think, I'm not sure, that's in the street, the last house on the street.

Q The last house on your street?

A I think that it is. It's about two years for sale.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Mols, have you ever seen the Corrales Heights swimming pool?

A Corrales Heights swimming -- I never went inside -- yes, I did once.

Q There is a swimming pool in Corrales Heights?

A Yes. Next to the --

Q Let me show you DZ for identification.

Is that the Corrales Heights swimming pool?

A I can't say no or yes, because I want the building next to it to recognize it.

Q You don't recognize it at all?

A They have the swimming pool next to the uditorium. Is that it? I don't know.

I'm sixty-eight years old. Do you think I go swim every day?

You lucky I --

Q You only looked at the Corrales Heights swimming pool once?

THE COURT: That's what he said, twice.

A Once.

THE COURT: You said it twice.

MR. ARISOHN: One more try, your Honor.

Q Have you ever been to the Rio Rancho country club?

A Once, again.

Q One time to the Rio Rancho country club?

A They invite you to dinner for nothing when they got you new thing.

Q Where in Rio Rancho country club did you eat your dinner?

A They invite every person come live over there-- I don't know now, my time, when you live in New Jersey, they got a welcome to have you dinner at country club. That is the first time I went and the last time. It's expensive to me.

Q Did you look out the window?

A Yeah, I did see.

THE COURT: Come on, Mr. Arisohn, objection sustained.

MR. ARISOHN: I ask to have marked --

THE COURT: Come on. You are not getting it through this witness. He has no problems with it, he likes his home.

THE WITNESS: I have nothing at all.

MR. ARISOHN: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

X BY MR. KAUFMAN:

Q Mr. Mols, do you remember Mr. Sprizzo reading to you from that report, which is --

MR. KAUFMAN: Do you have it, Mr. Sprizzo?

(Handing to Mr. Kaufman)

THE COURT: DN.

Q Do you remember Mr. Sprizzo reading this report, DN?

A He read the report to me, a little bit of it he did -- right.

Q Do you recall when you received that report?

A I can't tell right just what time. It was about after a while I bought, I got all the land, that's for sure.

Q After you got all the land ?

A That's for sure.

Q At the dinners when you bought the land, did anybody say to you that this was a speculative investment in which youcould lose money as well as gain money?

A No.

THE COURT: Wait. No.

THE WITNESS: No. Sorry.

Q What was said to you with respect to what type of investment this was?

A A land savings account is the best you can ever do. The bank is no good, because the money you got five percent, you lose every five percent on devaluation, you got nothing, and the land goes up triple, triple up all the time.

Q By the way, do you recall his Honor mentioning to you that you could return to the sunny southwest when you were finished here?

A Yeah. It's sunny, all right.

Q When you left Albuquerque to come to New York, what was the weather like?

MR. SPRIZZO: Objection.

THE COURT: Sustained.

A About ten inches --

THE COURT: Wait.

Mr. Kaufman, it is a quarter after four on a Friday afternoon. I want the next witness. That was a completely useless question.

Do you have something to get down on the merits on?

MR. KAUFMAN: Yes, your Honor.

THE COURT: If not, sit down.

Q Who was it who told you that Rio Rancho Estates would be developed in twenty years?

A Vice-president Sommerhalder.

Q Sommerhalder?

A Sommerhalder. I don't forget it now.

Q Was he referring to the total amount of property of Rio Rancho Estates?

MR. SPRIZZO: Objection to the question, the form of the question. It calls for someone else's --

THE COURT: Sustained.

MR. KAUFMAN: Has your Honor sustained the objection on Mr. Sprizzo's ground?

THE COURT: I have sustained the objection. Reframe your question.

Q What did Mr. Sommerhalder say to you with respect to the development of Rio Rancho Estates?

A He got a nice -- all figured out Rio Rancho a hundred percent with all the units in the back of his office and all trees and parks and churches and schools and he told me that no more land available after that, that's it, and every land, at least a third, we need for church and parks, and he said, "In twenty years from now, it's all set."

Q At that time, how many units were there at Rio Rancho?

A Seventeen.

Q I believe you testified there are twenty-six units now.

A I can't say how many. More than seventeen. I saw twenty-six already, but I don't knowwhat's after, in between. I don't know.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may step down. Next witness.

Thank you very mcch. Have a good trip home.

(Witness excused)

gtjw 7

MORRIS GUSOWSKY, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Gusowsky, I am going to ask you to keep your voice up so all the jurors can hear the answers to the questions.

Where do you live?

A I live in Rio Rancho.

Q And what is the address?

A 600 Rincon de Romos.

Q How long have you lived there?

A About five and a half years.

Q When did you first move there?

A In May of 1971.

Q Before that, where did you live?

A I lived on Staten Island, New York City.

Q How long did you live in Staten Island?

A About twenty years.

Q How old are you ?

A Sixty-three.

Q What is your educational background?

A My highest educational background is I'm a graduate of the City College of New York, bachelor of business administration and masters of business administration in the accounting field.

Q Are you a registered public accountant?

A I am registered in the State of New York.

Q Are you married?

A Yes.

Q Are you presently employed?

A No.

Q When you were living in Staten Island, before you moved to Rio Rancho, what was your employment?

A Would you please repeat that?

Q What did you do for a living when you lived in Staten Island?

A Basically, I was in the tire business.

Q Was that your own business?

A Yes, ma'am.

Q Did you have a partner?

A Yes, I did.

Q And what was that business?

A We sold and serviced truck and passenger tires.

Q How long did you have that business?

A About twenty years.

gtjw 9 Gusowsky - direct

Q Did you purchase land at Rio Rancho?

A Yes, I did.

Q When did you first purchase land at Rio Rancho?

A November of 1968.

Q How much land did you buy in November of 1968?

A I bought one acre.

Q Where did you buy the land, that one acre?

A I'm not sure I understand when you say where.

Q Did you buy it at a dinner party?

A I bought it at a dinner party.

Q Where was the dinner party held?

A It was held on Staten Island.

Q Did you see a film?

A Yes, I did.

Q Hear a presentation?

A Yes, I did.

Q Between November of 1968 and July of 1970, did you purchase 16 acres of land at Rio Rancho Estates?

A Yes, an accumulation of 16 acres.

Q And did you purchase these 16 acres at various dinner parties?

A Dinner parties and at Rio Rancho as well.

Q And was there at least one occasion when a salesman visited your home and sold you a piece of property?

A Yes, there was one occasion when that happened.

Q And do you recall which piece of property the salesman sold you at your home?

A He sold me one acre in Unit 16.

Q And was this after you had attended other dinner parties and purchased land?

A Yes.

MS. HYNES: Your Honor, in an attempt to shorten things, I am going to attempt to offer all the contracts of Mr. Gusowsky at one time.

The government offers 110-A, B, C, D, E, F, G, H and I and J.

MR. ARKIN: No objection to 110-A.

MS. THOMPSON: There is no objection to any of them.

(Government Exhibits 110-A through J, respectively, received in evidence)

x

Q Mr. Gusowsky, you bought one acre in November of 1968.

Was that acre in Unit 7?

A Yes, that was in Unit 7.

Q And what was your reason for buying that one acre in 1968?

A We contemplated moving to Albuquerque.

Q And did you purchase -- you purchased another acre in January of 1969, is that correct?

A Yes.

Q And that one acre --

THE COURT: Wait. Is that the next purchase?

MS. HYNES: Yes.

Q Was January of 1969 the second purchase of land?

A Yes.

I just want to refresh my memory.

(Pause)

A Yes, January 1969.

Q And was that one acre in Unit 9?

A That was in Unit 9, yes.

Q And did you purchase that at a dinner party?

A I purchased that at a dinner party.

Q And what was the reason for purchasing the one acre in Unit 9?

A That was for investment purposes.

Q Did you thereafter visit Rio Rancho?

A Yes, I did.

Q And was that in about February of 1969?

A Yes, it was.

Q Did you go on a company tour?

A Yes, I did.

Q When you went on the company tour, did you see your property?

A Yes, I did.

Q Did you trade -- did you exchange your Unit 9 piece of property for another piece of property when you were on the tour?

A Yes, I did.

Q And did you buy additional land while you were on the tour?

A I bought another acre at that time. I bought another acre.

Q And where was the other acre which you bought?

THE COURT: First let us find out what he exchanged the Unit 9 for.

THE WITNESS: Okay.

Q The Unit 9 piece --

A The Unit 9 piece was exchanged for Unit 17.

Q Was that a one acre piece in Unit 17?

A Yes, it was.

Q Did you buy additional land when you were on the tour?

A Yes.

Q And where was that?

A In Unit 17.

Q How much was that?

A One acre.

Q When you returned to Staten Island, did you attend other dinner parties when you came back from the tour in 1970?

A Yes, I did.

Q Let me direct your attention to Exhibit 110-D in evidence, which is a contract that is dated -- I am sorry -- withdrawn.

I want to refer to Government Exhibit 110-E in evidence, which is a contract dated March 16th of 1969.

Did your wife purchase an additional acre of land in March of 1969?

A Yes, she did.

Q And was that purchased with her aunt?

A Yes.

Q Did you subsequentl, take over the payments on that?

A Yes,I did.

Q And at the end of March of 1969, did you buy another acre of land?

I will show you Government Exhibit 110-F in evidence (handing).

A Yes, I did.

Q And where was that acre of land?

A That was in Unit 1.

Q And just for the record, the acre of land which was purchased by your wife and her aunt was in Unit 5?

A Yes.

Q And that is Government Exhibit 110-E.

In April of 1969, did you purchase land in Unit 13?

A Yes, I did.

Q And the purchases in March and April, were they at dinner parties in Staten Island?

A Yes, they were.

MS. HYNES: For the record, the contract for Unit 13 is 110-G.

Q Was that commercial property in Unit 13?

A Unit 13 was commercial property.

Q And, again, in April of 1969, did you purchase another acre of land in Unit 16?

A Yes. That was in Unit 16.

Q And was this the acre of land which you purchased when a salesman visited you?

A That's right.

Q And was this a salesman who had sold you land at other dinners which you had attended?

A Yes, he was.

pm

Q How did he come to visit you in your home?

A I don't understand the question.

THE COURT: He called you up and made a date with you?

THE WITNESS: He called me up.

THE COURT: Next question.

Q In May of 1969, did you purchase two and a half acres in Unit 11?

A Yes, I did.

Q Where did you purchase that land? Was that at a dinner party?

A That was at a dinner party.

THE COURT: What was the unit?

MS. HYNES: Unit 11.

Q In July of 1969 did you again visit RioRancho Estates?

A Yes, I did.

Q Did you exchange some of your property at the time you visited on that occasion?

A Yes, I did. I bought a ten acre ranchette and turned back two acres and the commercial property in Unit 13.

Q So you turned back -- did you turn back the acre in Unit 5 and 7 and the commercial property in Unit 13?

A That's right.

Q That is reflected in the contract, Government Exhibit 110-J, is that correct?

A That's correct.

Q The property that you purchased the second time that you went down to Rio Rancho, that was a ten acre ranchette?

THE COURT: When did you go?

THE WITNESS: In July of 1969.

THE COURT: All right. He said he bought a ten acre ranchette.

Q What were you told about the ranchette?

A That the ranchettes were few and it would be a good investment.

Q Was that the reason that you purchased?

A That was the reason that I purchased it.

Q Have you paid for your property in full?

A Yes, I have.

Q When did you make your last payment?

A About November of 1971.

Q How much have you paid, what is the total amount that you have paid on all the property that you purchased?

A About $45,000.

Q Where did you get the money to make those payments?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q At the time that you purchased your property between November of 1968 and July of 1969, was anything said to you about resale?

A Yes.

Q What was said to you to the best of your recollection?

A My recollection is that I was told that the company had sold approximately eighty percent of its land and that as soon as they sold the other twenty percent that they would go into a reselling program.

Q Did you rely upon that statement in purchasing this property?

A Yes, I did. At that time the company had about 50,000 acres.

Q Did you know at that time that the company was negotiating to buy another 37,000 acres?

A I did not know that.

Q Would you have bought your land if you did know that?

A I would not have.

Q When you visited, you visited Rio Rancho on two occasions between November of '68 and July of 1970, is that correct?

A That is right.

Q You saw the land that you had purchased and that land was undeveloped land, is that correct?

A Yes, it was.

Q What, if anything, was said to you about the development of the land that you had purchased?

A Well, the contract stipulated that if I had decided to build on that land and that the utilities had not reached that area, that the company would transfer me to a building area, even exchange.

Q Was it your understanding that the company would provide utilities to your lots?

A That was my expectation.

THE COURT: When?

THE WITNESS: When I bought.

THE COURT: You bought in January of 1968 -- November of '68, you say they told you they would bring utilities to your lots and you could go out there and build?

THE WITNESS: I didn't say that.

THE COURT: What did you say?

THE WITNESS: I said the contract said that in the event that I had decided to build on that land and that the utilities had not reached that area, that the company would switch me to a building area.

THE COURT: But I am worried about your next statement.

THE WITNESS: Repeat the next statement.

THE COURT: Read the next part about the company bringing utilities to him.

(Reading)

THE COURT: To your lots, that means the ones you had, not the ones you exchanged.

THE WITNESS: The ones I had.

THE COURT: Not the ones you exchanged?

THE WITNESS: No, the ones I had.

THE COURT: What was your expectation?

THE WITNESS: That utilities would reach that area.

THE COURT: My question is when?

THE WITNESS: Oh, I had no period in time. I couldn't say when.

THE COURT: Did they ever indicate any period in time to you?

THE WITNESS: No, there was never any indication.

THE COURT: All right, go ahead.

BY MS. HYNES:

Q You made your last purchase of land in July of '69, is that correct?

A Yes, it is.

Q After July of 1969 did you attend dinner parties?

A After that I did.

Q Approximately how many dinner parties and what period of time did you attend dinner parties?

A From the period that I started to buy until I moved to Rio Rancho, I must have attended about fifteen dinner parties.

Q I am directing your attention to the period after you purchased your last piece in July of 1969 to the time that you moved to Rio Rancho, that was May of '71.

A That's right.

Q Approximately how many dinner parties did you attend?

A About eight dinner parties in that period.

Q At those dinner parties was anything said to you about any increased value in the land that you had purchased?

A Yes. The sheets that came out indicated that the prices had gone up since the time that I made my purchase.

Q These were price sheets that were used?

A Yes.

Q Were you shown these price sheets?

A Yes.

MR. FLEMING: The price of what?

I don't understand the price of what, his land?

THE COURT: He said the price sheets that were shown to him indicated that the prices had gone up.

MS. HYNES: I will inquire further.

Q Mr. Gusowsky, what specifically was said about the price sheets that were shown to you in reference to your land?

A Well, since my land was in the area, for example, if I purchased in Unit --

MR. FLEMING: The question was what was said, I think, your Honor.

THE COURT: That is right.

Was anything said to you or they just showed you price sheets?

THE WITNESS: They told us that the prices had gone up and the price sheets were used as specific evidence that the prices had gone up.

THE COURT: How did they relate that to your land?

THE WITNESS: They were related by units.

THE COURT: By the number? If it said Unit 17 and you had land in 17, you assumed that the price that was shown on the price sheet was referring to land like yours in Unit 17?

THE WITNESS: That is right.

THE COURT: All right, next question.

Q Did you assume or were you told by a sales person?

A I was told that my land went up in price.

Q When you visited your property in July of 1969 was anything told to you at that time at the property about any increased value in the land that you had previously purchased?

A The salesman gave me a calculation of the present value of the land that I had.

Q Do you recall what that tabulation stated?

A Offhand I would say it would approximate about $35,000 for land that Ihad paid about twenty.

Q At that time you had paid $20,000?

A Yes.

Q Did you refer other people and speak about Rio Rancho to friends of yours?

A I spoke about Rio Rancho to friends of mine and my relatives.

Q Did friends of yours buy at Rio Rancho as a result of your conversations with them?

A I presume they bought it as a result of my conversations.

Q Let me show you Government Exhibit 110-K ard ask if you can identify that.

Did you receive that letter?

A Yes, I did.

THE COURT: 110-A?

MS. HYNES: K.

I offer it.

MS. THOMPSON: No objection.

(Government Exhibit 110-K recevied in evidence)

xxx

THE COURT: All right.

Q Mr. Gusowsky -- withdrawn.

MS. HYNES: Your Honor, may I read from 110-K?

THE COURT: Yes.

(Ms. HYNES read from Government Exhibit 110-K in evidence to the jury)

Q Mr. Gusowsky, did there come a time when you received an acre of land from Rio Rancho Estates as a result of ten referrals?

A Not an acre, a half acre.

Q A half acre, I am sorry, a half acre of land. When was that?

A That was sometime in 1972.

Q You have testified that you moved to Rio Rancho Estates in May of 1971, is that correct?

A That is correct.

Q At the time that you were preparing to move to Rio Rancho Estates, were you shown various building areas at Rio Rancho?

A Yes, I was.

Q Were you show Unit 16?

A Yes, I was.

Q Did you pick out a lot in Unit 16?

A I picked out a lot in Unit 16.

Q Did you build on that lot in Unit 16?

A No, I did not.

Q What was the reason for that?

A I didn't like the lot.

Q Were you shown a building area in Unit 11?

A Yes, I was.

Q Can you describe the building area in Unit 11 at the time you saw it in 1971?

A Well, the unit -- the area in Unit 11 at that time was just about being started and it didn't suit my purpose and so I didn't chose a lot in that area.

Q Were there paved roads leading up to Unit 11?

A Part of the way.

Q What part of the road -- what was the distance of dirt road leading up to Unit 11?

A I would say about three miles.

Q Were there houses in Unit 11 at that time?

A Yes, there were.

Q Has the road leading up to Unit 11 been paved since that time?

A Yes, I think it was paved in the past six months.

Q In the past six months.

Were you shown Corrales Heights?

A Yes, I was.

Q Did you eventually build your house in Corrales Heights?

A That is where I built my house.

Q Can you tell us how the exchange into Corrales Heights worked?

A I turned back a half acre in Unit 1 and paid an additional $1400, for a one-third acre instead of a half acre that I turned back.

Q Are you happy with your house in Corrales Heights?

A Yes, I am.

Q Are you happy with living at Rio Rancho Estates?

A Yes, I am.

Q Can you just briefly list for us, you have sixteen acres, you still have a half acre in Unit 1, is that correct?

A That is correct.

Q And you stated that you have two acres in Unit 11.

A That is correct.

Q How far are the two acres in Unit 11 from the building area in Unit 11?

A Approximately one mile.

Q How far are the utilities from the various properties that you own in Unit 17?

A In Unit 17 I would say they are approximately one mile as well.

Q You said that you owned an acre in Unit 16, is that correct?

A Yes.

Q Is the building area in Unit 16 today filled up as far as you know?

A As far as I know it is filled up.

Q How far is your acre in Unit 16 from the building area in Unit 16?

A Approximately a mile from the built area.

Q After the building area in Unit 16 was filled up, the company then opened Unit 11; is that the best of your knowledge?

A Yes, that is what happened.

Q Then the company also opened up an area in Corrales Heights?

A Yes.

Q To your knowledge are utilities being extended beyond the building areas to lots that are outside of the building areas?

A Not as far as I know.

Q Are your lots located outside of the building areas?

A They are located outside the building areas.

Q Do you have a right to exchange your ten acre ranchette for any land in a building area with utilities?

A I don't think so.

Q How much was your ten acre ranchette in Unit 17?

A The cost?

Q Yes.

A $21,000 approximately.

Q Was it your understanding that that cost included utilities for that ten acres?

A Yes, it was my understanding.

t

Q There came a time when you worked for Rio Rancho, is that correct?

A Yes.

Q When did you first begin to work for Rio Rancho?

A In September of 1971.

Q What did you do for them?

A I was in the accounting department. I was one of their accountants.

Q How long did you work for the company?

A Until August of 1974.

Q What happened in August of 1974?

A There was a reduction in force.

Q Were you laid off?

A I was laid off.

Q Is there a resale market for Rio Rancho lots in Albuquerque?

A I don't think so.

MR. FLEMING: Objection.

THE COURT: To the extent that he knows, you can cross examine. He has lived there for a number of years now.

Q Was a resale program ever set up by Rio Rancho --

MR. FLEMING: Was there an answer?

MS. HYNES: I will ask the question again.

Q Mr. Gusowsky --

THE COURT: Not to my knowledge.

Q Was a resale program ever set up by the company for the resale of lots?

A No, there wasn't.

Q Since you lived in Rio Rancho, since May of 1971, you have seen the city of Albuquerque grow, is that correct?

A That's correct.

Q Where has that growth taken place?

A It has taken place in the four areas, northeast, south and west, but basically in the northeast area.

MR. FLEMING: May I have the answer?

(Record read.)

Q When you refer to those four areas, are those four areas of Bernalillo County?

A Yes, they are all in Bernalillo County.

Q When you say northwest, is that the northwest sectionof Bernalillo County?

A That's part of the west mesa.

Q Is that south of Rio Rancho?

A South.

Q Closer to the city of Albuquerque?

A Yes, it is closer to the city of Albuquerque.

MS. HYNES: I have no further questions, your Honor.

THE COURT: You may cross examine.

XXXX

CROSS EXAMINATION

BY MS. THOMPSON:

Q Mr. Gusowsky, my name is Lois Thompson and I represent some of the defendants.

Ms. Hynes just askedyou about the growth of Albuquerque. During the time that you have lived at Rio Rancho since you purchased land at Rio Rancho have you seen Rio Rancho grow?

A Yes, I have.

Q How would you characterize that growth?

A I don't understand the question.

Q Let me ask it this way: Isn't it a fact that the growth thatyou have seen at Rio Rancho has been rapid growth?

MS. HYNES: Objection unless there is a definition of rapid.

THE COURT: The witness can make that objection, Ms. Hynes.

A Rapid is a relative term and I don't know how to express myself.

Q Mr. Gusowsky, are you president of the Rio Rancho

Home Owners Civic Association?

A No, I am not.

Q Were you formerly -- I am sorry, board chairman?

A I was board chairman, yes.

Q Was there a time before Sandoval County adopted its budget for fiscal year '74-'75 when the Home Owners Civic Association circulated a petition to Sandoval County?

A You would have to be more specific.

Q Do you recall circulating a petition requesting an additional police force for Rio Rancho?

A Yes.

Q Do you recall characterizing the growth of Rio Rancho as rapid in that petition?

A No, I don't remember that, but if it says so, I will take your word for it.

THE COURT: Mark it.

MS. THOMPSON: Mark it for identification.

XXX (Defendant AMREP Corporation Exhibit EC marked for identification.)

Q Let me show you this document and ask you whether it refreshes your recollection that the Home Owners Civic Association characterized the growth of Rio Rancho as rapid growth?

A Well --

Q Just answer yes or no.

A I can't answer yes or no.

THE COURT: Does it say rapid growth?

Q Does it refresh your recollection --

A It says rapid growth;I would have no objection to that.

THE COURT: Is it not whether you have an objection. You are being asked whether it says it and you say yes, it does.

THE WITNESS: It does.

THE COURT: All right.

THE WITNESS: I said that before.

THE COURT: No, you didn't. I am sorry.

THE WITNESS: Okay.

MS. THOMPSON: I offer it in evidence.

MS. HYNES: I have no objection.

XXX (Defendant AMREP Corporation Exhibit EC receive in evidence)

Q Mr. Gusowsky, you testified earlier that you purchased two acres of land and then subsequently visited Rio Rancho, is that correct?

A That's correct.

Q It was subsequent to your first visit to Rio Rancho that you purchased the additional 14 and a half acres of land that you purchased, is that correct?

A That's correct.

Q Is it also the case that you and your wife visited Rio Rancho four times between the period of your first visit in 1969 and when you moved there in 1971?

A That's about right.

Q Each time you visited Rio Rancho, did you go out and look at your land?

A No, I didn't.

Q You testified earlier, am I correct, that you purchased your second acre of land for investment?

A That's right.

Q Now, it is true, is it not, that you own land in Staten Island?

A I do not own land in Staten Island.

Q That you did own land in Staten Island?

A Yes, I did.

Q At the time that you purchaed your first two acres of land, did you own land in Staten Island?

A Yes, I did.

Q At the time that you purchased your first two acres of land in 1968 and '69 was the Veranzzano Bridge under construction to Staten Island?

A I think it was.

Q Had you seen the effect that the Veranzzano Bridge had had on land values in Staten Island?

A I have seen the effect.

Q Isn't it true that your desire to purchase land at Rio Rancho for investment was motivated by your personal knowledge of what happened to land values in Staten Island after the Veranzzano Bridge began construction?

A No, it is not. Perhaps I should amend my statement, that's not the only reason.

Q Is it one of the reasons?

A Yes.

Q Do you recall being interviewed by someone working for the defendants in September of this year and telling him that that was one of your reasons for your purchase?

A I may have. I don't remember.

Q Do you recall being interviewed?

A Yes.

Q When you first visited Rio Rancho were you generally happy with what you saw there?

A I don't know what you mean.

Q You referred others and invited them to dinner parties who purchased land, did you not?

A I didn't invite them. They offered to come after I spoke about Rio Rancho.

Q What did you tell those people?

A What I liked I saw in Rio Rancho itself.

Q What did you tell them you had liked?

A I liked the climate and the area seemed to be conducive to good living.

Q When did you first invite people to attend dinner parties with you?

A I didn't invite them. I spoke about it to them.

Q And they came along with you?

A Yes.

Q When is the first time --

THE COURT: Wait. You had to invite them, they didn't know about a dinner party unless you told them, did they?

THE WITNESS: They merely said that when you go the next time, can we come with you. If you want to call that an invitation, I will accept it.

THE COURT: Go ahead.

Q Are you saying that one the basis of what you told them they invited themselves?

A Yes.

Q When is the first time that someone who invited himself came with you to a dinner party?

A I don't remember exactly.

Q Could you tell me approximately?

A I presume the early part of 1969.

Q Did people continue to invite themselves to attend dinner parties with you through 1971 when you moved to Rio Rancho?

A Approximately.

Q After you moved to Rio Rancho, did you continue to tell people back in New York about Rio Rancho?

A Yes, I did.

Q Did you continue to tell them that it was a good place to live?

A Well, I told them many things.

Q What did you tell them?

A I told them that it was a good place to live, but I also answered letters that came to me asking what the possibility of selling their land.

Q It is true, is it not, that at sometime in 1972 you received one half acre from the company as a result of referrals you made to the company?

A Well, I don't like to accept that word referrals because referrals to me mean that I went out and solicited. I didn't solicit.

Q But you didn't object to the fact that the company gave you the half acre of land?

A No, I didn't object.

Q Did there come a time when you learned that Rio Rancho had increased in size from the original 55,000 acres?

A Please repeat that.

Q Did there come a time when you learned that Rio Rancho had acquired additional land?

A Yes, I learned about that.

Q Isn't it true that you knew that Rio Rancho had acquired additional land before you moved there in May of 1971?

A That's true.

Q You moved there nonetheless?

A Yes.

Q After that move you continued to tell people about Rio Rancho?

A Yes, I did.

Q It was after that move and after you had learned of the acquisition of the additional land that you received the one half acre from the company?

A Yes.

Q Somehow you had gotten customers for the company?

A That's true.

Q You testified earlier that you exchanged certain of your land for the ten acre ranchette, is that correct?

A That's correct.

Q Is one plot of land that you exchanged your commercial property that you had purchased?

A Yes, I did.

Q It would be correct to say that the company allowed you to exchange commercial land?

A It's correct.

Q As well as allowing you to exchange residential land?

A That's correct.

Q Now, you also testified earlier about your acquisition of your house. It's true, is it not, that you were informed simultaneously of the existence of the building area in unit 11 and the existence of the new building area in Corrales Heights, isn't it?

A Yes.

Q You were given your choice of whether to move into unit 11 or exchange into Corrales Heights?

A That's right.

Q You also testified that you worked for the company for a period of time?

A That's right.

Q Would it be fair to say that you had a good relationship with the company both in your capacity as an employee and in your capacity as a resident?

A I would say so.

Q You are referred to in the indictment in this case, isn't that so?

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

A I don't understand the question.

Q Mr. Gusowsky, do you know that your name appears in the indictment in this case?

A No, I don't know that.

Q Do you recall telling someone who interviewed you for the defendants on September 23, 1976, that you had been told by an AMREP employee that you were referred to in the indictment?

A Will you please repeat that?

Q Do you recall telling someone who came to interview you on behalf of the defendants in September of this year that an AMREP employee had told you that you were referred to in the indictment in this case?

A I have to sort of qualify my statement because I didn't say that I was in the indictment. I merely said that I was considered as Count No. 23. I am not sure that I know what that means.

THE COURT: Would you take Count No. 10 instead of Count 23?

THE WITNESS: No, I won't take any count.

MR. FLEMING: Exercise his exchange right, your Honor.

Q Mr. Gusowsky, how did you find out that you were a count in the indictment?

A First I want you to relate what Count No. 23 means --

Q I didn't ask you what it meant.

A I want to know otherwise I can't answer your question.

THE COURT: You said you told somebody you knew you were in Count 23. Somebody told you.

THE WITNESS: Yes.

THE COURT: She wants to know how you found out.

THE WITNESS: Oh, how I found out about that?

Q Yes.

A I found out about that when I became a member of the water rate committee. Now, do you want me to explain that?

Q First tell me your whole story.

A I was a member of the Rio Rancho Home Owners Association --

Q No, no, Mr. Gusowsky. After you became a member of the water rate committee, what happened?

A I was told by the president of the Home Owners Association that I couldn't serve on the committee because I was Count No. 23.

Q Until that time you did not know that you were in any count in the indictment?

A I did not.

Q The government had never told you you were a count in the indictment?

A No, they never did.

Q Isn't it a fact that you found it embarrassing to be a count in the indictment?

A It was embarrassing because I didn't know anything about it.

(Continued on next page.)

Q You testified earlier that you have a Master's in business administration, is that correct?

A That's right.

Q And isn't it a fact that you have a Master's in business administration with a specialization in accounting and finance?

A That's right.

THE COURT: How much more do you have?

MS. THOMPSON: At least another ten minutes.

THE COURT: Mr. Arkin, are you going to cross examine?

MR. ARKIN: Oh, no, your Honor. Mr. Fleming is.

THE COURT: I think we better adjourn.

Monday morning at 10:00.

Have a good weekend.

(The jury left the courtroom.)

THE COURT: Ms. Hynes, did you overlook putting in the mailing for this witness?

MS. HYNES: I can't hear you.

THE COURT: Did you overlook putting in the mailing?

MS. HYNES: I found out in talking to this witness, although he has a mailing and there is a company record that says there is a mailing, he has told me that after he moved to Rio Rancho he would walk the mailing over -- he would walk his payment over to the office, so there is not a mailing as far as I know in the Southern District, at least this witness couldn't testify, unless the mailing then went back to the Chemical Bank of New York.

THE COURT: In other words, he made no payments while he was in New York to the Chemical Bank, his payments --

MS. HYNES: He made payments to the Chemical Bank until May of 1971, when he moved to Rio Rancho. Then he made payments to the company's offices at Rio Rancho, so there is no mailing into the Southern District which I can prove through this witness.

THE COURT: You can prove the mailing before --

MS. HYNES: I can, but the indictment says November.

THE COURT: November of what?

MS. HYNES: Of 1971. He moved to Rio Rancho in May of 1971.

If the defendants tell me that once the administrative office in Rio Rancho gets it and mails it back to the Chemical Bank for entry, then we have a mailing, but other than that --

THE COURT: What do you want, Mr. Defendants?

MR. ARKIN: What do we want?

THE COURT: Yes.

MR. ARKIN: Give him his wish, he doesn't have to be a count. We will give him his wish.

I can't say to your Honor, in seriousness, that once Mr. Gusowsky walked over to the administration building with his check or with his cash it was mailed back to New York.

THE COURT: How about he mailed it prior, before he went out?

MS. HYNES: That is before the statutory period.

MR. ARKIN: That is allowing a variance in the indictment, you mean.

MS. HYNES: No. The superseding indictment was filed in July of 1971 and his last payment was May of 1971.

THE COURT: What? The superseding --

MR. FLEMING: He is time barred.

THE COURT: You don't get time barred, do you, by a superseding indictment if he was set forth in the original.

MS. HYNES: Okay. I'm sorry, I am corrected, then.

MR. FLEMING: That is a good question, Judge. I think you do, unless there is a dismissal.

THE COURT: No, no. If you have an original indictment filed with Mr. Gusowsky whose mailing would be within the time period and you filed a superseding with Mr. Gusowsky, you don't start a new time period.

MR. ARKIN: No, I don't think you do.

MR. FLEMING: You mean the first indictment totals the statute?

MR. SPRIZZO: I don't think it does.

MR. FLEMING: Your Honor, what they do with Mr. Gusowsky is of minor concern to me, but I know when an indictment is dismissed there is a six-month period of time within which --

THE COURT: I know that. I did that in the Rosner case.

MR. FLEMING: That's the only thing I know of. Let's think about that.

THE COURT: A superseding sets the time limit and you go back five years from the superseding?

MR. SPRIZZO: I think they are time barred.

MR. ARKIN: I think the original indictment governs in terms of time, so if the original indictment came down in October of 1975 -- is that correct, Ms. Hynes?

MS. HYNES: Yes.

MR. ARKIN: That is a date I remember.

THE COURT: And you file a superseding, you still go five years back from --

MR. ARKIN: From the original of 1975.

If Mr. Gusowsky was Count 23 in the original indictment, then if he made mailings in 1970, he would be within the statute.

THE COURT: All right.

The only question is, would you accept the variance from November to May?

MR. ARKIN: I will accept the variance.

THE COURT: You, Mr. Fleming?

MR. FLEMING: I will, your Honor.

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: I will, your Honor.

THE COURT: Mr. Hoffinger?

MR. HOFFINGER: No, your Honor.

THE COURT: You won't?

MR. HOFFINGER: No.

THE COURT: Okay.

You are just getting another witness, that's all you are getting.

MR. FLEMING: Judge, that is not bad.

I saw that helicopter film yesterday that the government has taken. They took it from 5,000 feet, to begin with.

I was wondering if Ms. Hynes is prepared to say for what purpose they are offering that film, because I must say, looking at it, I see that it serves no probative purpose, and unless she can suggest one which made sense to me I would have to prevail upon your Honor to look at it.

THE COURT: I thought they were only offering '67 and '75.

MS. HYNES: At this time.

MR. FLEMING: They have a helicopter film.

THE COURT: What is that needed for, Ms. Hynes?

MS. HYNES: Your Honor, the film is to show the land on the west side of Albuquerque and also the land at Rio Rancho.

When you see the stills -- I mean, I am happy to show it to your Honor and show you the difference, but it shows you what land is available on the west side. There will be somebody who can testify and to identify it.

It also shows you the actual property. It is flown over the property and it shows you what the property, in fact, looks like as opposed to a still black and white picture.

THE COURT: I think a still is much better than a moving picture.

MR. FLEMING: If you saw this one, your Honor, it is at 5,000 feet, you can't see a thing.

MS. HYNES: Your Honor, then I am going to have to ask your Honor to view it, because you can see a great deal, and I think that talking about it in a vacuum is not serving very much of a purpose.

THE COURT: I will look at it next week.

I have no objection to stills coming in, but moving pictures give -- I am not sure the jury even remembers what you showed them three weeks ago of West Side Story.

MS. HYNES: Part of it, your Honor, is also connected to that.

The film, the promotional film of the defendants shows -- they have two films in evidence or we have two films in evidence which show the developed portion of Rio Rancho on films, some shots of the property, and the government is entitled to show what the remaining part looks like.

The films of the property --

THE COURT: Yes. But their films are down on the land.

MS. HYNES: Yes. Ours are also, your Honor, and you will see it, because some of their films are taken from a helicopter. You see shots of the property and there is one narration of the film and the script says, "Let's see it by air."

MR. FLEMING: From 500 feet, your Honor.

Your Honor will have to look at it.

THE COURT: I will look at it.

MR. FLEMING: I just tell you, you can't see anything on it.

MR. DEVORKIN: Because that is nothing there.

MS. HYNES: It is the undeveloped portion, that's why.

MR. FLEMING: I think that is distorted and I would like your Honor to look at it.

THE COURT: Mr. Arkin?

MR. ARKIN: Are we off the subject of the helicopter?

THE COURT: I gather.

MR. HOFFINGER: Your Honor, I would like to withdraw my objection.

I have no objection if your Honor is going to permit another witness to testify.

THE COURT: Obviously I have to permit another witness to testify.

MR. HOFFINGER: Okay. I withdraw my objection.

THE COURT: Mr. Rubino?

MR. RUBINO: Your Honor, I will have no objection providing it is clearly understood I am not waiving any objection with respect to any and all testimony post-retirement, namely, September of 1969, with respect to Oberman.

Your Honor granted me --

THE COURT: I sustained that. You have a continuing objection to that.

Then, Ms. Hynes, I think you ought to put in the record from the witness the first thing Monday morning that while he was here he made payments to Chemical and that takes care of that, there are no objections by any defendant to the amendment of the indictment to change the date from November to May.

All right.

Now you have another problem, Mr. Arkin?

MR. ARKIN: No, I don't think so. Do I?

THE COURT: You just said, "Are we through with the helicopter?"

MR. ARKIN: I was thinking of Mr. Hoffinger's problem. He and I discussed the matter and he was withdrawing his objection and I just wanted to make sure it was an appropriate time for it to be done.

THE COURT: It is done.

Have a good weekend.

MR. ARKIN: You too, your Honor.

(Adjournment taken to Monday, December 6, 1976, at 10:00 a.m.)

***

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Harriet James (Resumed)	3606	3628	3676 3684	3684
Gustave Alfons Mols	3685	3734	3776	
Morris Gusowsky	3780	3805		

EXHIBIT INDEX

Government	Identification	In Evidence
652		3607
655		3608
1000		3611
1066-B	3615	3617
1407-A	3692	3693
1407-B	3695	3695
1407-C,1407-D,1407-E	3696	3698
1407-F	3706	3707
1407-G		3731
1407-H,1407-I	3732	
110-A through 110-J		3783
110-K		3797
Defendant AMREP Corporation		
EC	3806	3807

EXHIBIT INDEX

Defendant Chester Carity and Daniel Friedman	Identification	In Evidence
DF	3630	
DG	3630	3631
DH	3630	3631
DI	3646	3648
DJ	3656	3657
DK	3661	
DL	3661	
DM		3664
DN	3742	3743
DO	3745	3745
DP	3760	3772
DQ	3760	3770
DS	3760	
DT	3760	
DU	3760	
DV	3760	
DW	3760	
DY	3760	
DZ	3760	
EA	3760	
EB	3760	

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

December 6, 1976
10:00 a.m.

oOo

(Trial resumes.)

(In the robing room.)

THE COURT: Yes.

MS. HYNES: Good morning, your Honor.

Your Honor, the issue of the film with the government was raised at the end of last week. We will be calling Mr. Woodward, who is the gentleman that Mr. Devorkin has spoken about in connection with the mosaics.

Mr. Woodward is also the gentleman who did the film. We would be calling him today and since your Honor has indicated and we agree that your Honor should see the film, perhaps there should be an evidentiary hearing outside of the hearing of the jury on the film if your Honor wants to see it and have Mr. Woodward describe what he did, have a narration and in that way we can call Mr.

Woodward at one time and put in everything at one time.

It was originally our intention to make an application to your Honor to have Mr. Woodward called back at a second time to introduce the film. We have no objection to having him put in everything at one time. We would not be showing the film at the same time as we are doing the mosaics. That would come in slightly later in the case, but basically we believe that your Honor should look at the film. Mr. Woodward is available this morning and we can show your Honor the film and he will also be testifying with respect to the mosaics. He will be here shortly. We expect that he is bringing these mosaics with him.

THE COURT: In the first place, we are only going to sit this morning, we won't be sitting this afternoon, but we will sit until 1:30.

I won't be able to look at it this afternoon. I would rather look at it myself without anybody around.

I gather you are not putting the film in now anyhow today so it makes no difference.

MS. HYNES: In a short narrative he can tell your Honor what was done with the film.

THE COURT: I don't want to be told. I want to look at it first alone with nobody there. Then I will listen to a narrative.

Let's put some testimony in.

MR. LAVINSKY: Your Honor, I have a brief statement to make on the record.

There will be several witnesses that the prosecution will be calling this week dealing with the growth of Albuquerque and population projections and its impact on Rio Rancho.

We have a planning expert that we will have with us during that testimony and a person who may be a witness for us dealing with the same subject matter on our case.

I just wanted to simply state that for the record.

THE COURT: That's normal. Experts are entitled to listen to the testimony of the adversary and testify against him.

MR. LAVINSKY: I understand that. I simply wanted to apprise Ms. Hynes of the fact this is being done so we don't have any problems later.

MS. HYNES: Can we have the name of the individual

MR. ARKIN: Mr. Fawcett from the firm of Marcou, O'Leary, Washington, D.C. You have their names, Ms. Hynes.

MR. DEVORKIN: I have two names, your Honor. On the subject of the mosaics.

We were discussing last week preliminary to your

Honor's ruling of what we should do with the mosaics, the technical aspects of the picture taking themselves such as the kind of camera that was used, the kind of lens that was used, the height above ground the picture was taken and I believe the weather conditions on the day in question.

I, in my office, have inquired of the appropriate agencies who checked their films for each of the flights or films we are talking about and I have the technical data and the question was left open last week was if the defendants were going to cross examine on the basis of that technical information, the government would of course be entitled to put the technical information into the record so there would be information to cross examine about.

Mr. Woodward didn't take these pictures. They were taken in the course of normal government activities.

I thought last week the case was that the defendants would accept my representations as to what the government records showed the technical facts were rather than having us call 10 or 15 people to put those same facts in.

I think the rules of evidence would permit us to call the file clerk to testify that they are on record with the United States and these files show, A, B, C, D and E. We have to go back to the person who actually flew the aircraft.

THE COURT: I don't think you need the person who flew the aircraft, but I think you need the documents from the files that would indicate the technical answers.

MR. ARKIN: As I said to Mr. Devorkin, if it was a difference between a file clerk and a representation, I won't require a file clerk, but in respect to the technical information that we might have we will want to cross examine on that and I think a way to proceed would be for us to get the information or representation that Mr. Devorkin wants to make and I will look at them and I can assure your Honor we have no interest in prolonging this trial or bringing in people who aren't worth having on the stand and who do not add anything to the evidence.

THE COURT: I thought I said last week for Mr. Devorkin to turn over to the defense the technical information that appears in the file.

MR. DEVORKIN: I have all of it, now.

THE COURT: Did you turn it over?

MR. DEVORKIN: No.

THE COURT: Turn it over and let them look it over and see whether they want to pursue it. Then after they have looked at it and determined what they want to do, then we can handle it.

MR. DEVORKIN: The last item. I wanted to do this now as opposed to a side bar.

After Mr. Gusowsky finishes his testimony this morning, I am going to seek to introduce various documents. One is a document which is a document tendered already, I believe, on redirect of Perlmutter and your Honor sustained an objection to it. I wanted to clarify something about this document because your Honor dealt with this document at the pretrial.

The document is 513-E.

THE COURT: The number means nothing to me. I have to see it. I don't carry 2,000 exhibits in my head or like 92 with 144 subdivisions to it.

(Pause.)

THE COURT: What is the problem here?

MR. DEVORKIN: On October 29th at one of the pretrial hearings, your Honor, we were reviewing this document and I had indicated I would ask the defense for a stipulation as to its authenticity and they checked with Mr. Carroll to see whether it was authentic.

The court indicated at that time, quoting from page 59 of the transcript speaking to Ms. Cross, authenticity, you can find out yourselves, can't you. I gather he is your attorney in Ohio.

There is some colloquy between your Honor and Ms. Cross and your Honor goes on at page 56 to say: "If this man was your attorney, whom you paid, you can find out very easily whether this letter is authentic or not. We don't have to get into any hassle on that. I am not going to let you sit back when you know it is authentic and can find out very easily and waste a lot of time fighting over it. This man is your attorney whom you paid a fee to. Let's not waste time on that nonsense."

Ms. Cross says: "I don't know whether or not this is significant. I am not familiar with it at all.

"The Court: Ask him. Those objections are captions in my book. He is your man, he is your attorney, you paid him a fee, he can tell you whether it is authentic or not. Don't tell me we are going to go through a lot of nonsense to prove authenticity in a case like that."

We are waiting for the defendants to indicate whether it is authentic. If it is authentic, then I think it does come in to evidence and I would seek to reoffer it.

THE COURT: Is there any objection on authenticity

MS. CROSS: Can I see the letter, your Honor?

MS. CROSS: No, I have no objection on authenticity. There are, of course, other reasons why it is objectionable, particularly through Gustave Mols. I see no connection between this letter -- I mean Mr. Gusowsky.

MS. HYNES: After Mr. Gusowsky is off the stand. It is the next item the government seeks to offer. We are not in any way representing that it is in any way related to Mr. Gusowsky or his testimony.

MR. ARKIN: First of all, it is a hearsay document, your Honor.

THE COURT: This is your attorney.

MR. FLEMING: The problem is, your Honor, the letter is stating matters which purportedly were stated to the attorney by someone employed by the State of Ohio.

THE COURT: No, you, the defendants, understand this to be so.

He is your agent and this is the area in which he is your agent.

MR. FLEMING: I read it as expressing communication from the State of Ohio and if it is going to be offered, I have no objection to that type of evidence, but it seems to me it should be produced in the form of a witness from the State of Ohio who can be examined as to precisely what their approval does mean.

MR. DEVORKIN: That's not what the letter says.

THE COURT: It is being offered in essence as an admission on your part as to your understanding of the law, as I gather it.

MR. ARKIN: Your Honor, one --

THE COURT: Let Mr. Fleming read it. You talk while he is reading it.

MR. ARKIN: Yes, your Honor.

The issue which we have raised so far in the case has been the meaning of approval in New York State, which I will say to your Honor has a somewhat different statutory scheme than other states throughout the country. Every state has its own statutory scheme in terms of approval and review of documents. This speaks of Ohio.

To be sure Mr. Carroll was a lawyer for the corporation, but I believe, as Mr. Fleming was saying, what he seems to be reiterating is what Ohio may have said to him or somebody from Ohio may have said to him, some functionary in the Ohio Department of State or real estate department.

So it is not as if he were saying something which would bind us. It is not as if the statements he makes are those which express what the company wanted to say.

(Continued on next page.)

THE COURT: I will read the letter again.

If this issue of what the law means is such an important issue in this case, I think it would be better to have a live witness.

MS. CROSS: He is on the will-call witness list, your Honor.

MS. HYNES: Part of the government's proof here is notice to the defendants. As your Honor has noted that is an attorney for the defendants in Ohio during Mr. Perlmutter's testimony Mr. Arkin elicited that other states also gave approval. Ohio happens to be one of the states that the defendants have contended is a state that gave approval for the advertising.

They have sold in Ohio.

THE COURT: Not in this trial. So far in this trial they specifically mentioned only Florida. I remember that instant vividly. You tried to bring in Ohio in whereas they all brought out Florida and therefore eighteen or seventeen other states.

MS. HYNES: During Mr. Perlmutter asked him an open ended question about approval submitted to other states. My recollection is Ohio wasn't specifically mentioned. It was just other states.

THE COURT: He said he didn't know until

Mr. Arkin -- the witness says he didn't know what the requirements in other states were until Mr. Arkin brought up Florida with a number and then that refreshed his recollection about Florida.

MS. HYNES: Your Honor, the point is that we are entitled to show what the defendants were on notice with respect to other states. Of course the fact that Permutter only knew about Florida doesn't preclude the government's proof during this trial to only Florida.

THE COURT: I want to read it again. Supposing this letter incorrectly stated the law of Ohio.

MR. HOFFINGER: That is the whole point.

MR. FLEMING: If I could make another point, your Honor. Suppose the guy testified from the state of Ohio and he said, you know, we go down there, we look over everything. We look at what is written. We make a judgment as to the plain import of the language, but we don't estop ourselves. That is an entirely different situation than one where they say we just look at the document and we stamp it because it has been submitted and we send it back to the company and say do what you want with it.

This is material on the question of what is being raised here.

THE COURT: Let me read it again.

(Pause)

THE COURT: From your exhibit list and witness list Ohio seems to be an important factor of your proof. I would rather see a live witness on this.

MS. HYNES: Your Honor, the defendants have already stated that -- I mean the testimony has already indicated that the defendants sold in Ohio. The fact that we get into these -- the real issue here is what the defendants were on notice. If somebody comes in from Ohio now and starts --

THE COURT: On notice as to what?

MS. HYNES: On notice as to what is in this letter.

THE COURT: Supposing the understanding in the letter is incorrect and that the state of Ohio goes beyond that.

MS. HYNES: That is for the defendants. We are entitled to offer this as evidence and the defendants are entitled to attack it.

THE COURT: You have the burden of showing what the Ohio law is because that, I gather, is what you tired to do with the New York law.

MS. HYNES: Your Honor, you are making an assumption that this is not --

THE COURT: I have made a ruling, Ms. Hynes. That is the end of the argument.

You have a whole list of people from Ohio on your will-call list. Bring him in and put him on the stand.

(In open court - jury present)

MORRIS GUSOWSKY, resumed.

THE COURT: Good morning. I want to tell the jury we will not be sitting this afternoon, but the morning session will go through to 1:30 and then we will adjourn for the rest of the day.

You may proceed.

Mr. Lavinsky.

MS. THOMPSON: Your Honor, I believe after court on Friday there was an issue discussed and Ms. Hynes was supposed to direct a question to Mr. Gusowsky this morning.

MS. HYNES: I can do it on redirect, your Honor.

THE COURT: Go ahead.

CROSS EXAMINATION CONTINUED

BY MS. THOMPSON:

Q Mr. Guswosky, you own land in Unit 17, do you not?

A I do.

Q Are you aware of the fact that there presently are eight lots prepared for development in Unit 17 today?

A I am not aware of it.

Q Are you aware of the fact that a lot prepared for development was recently sold for $23,350?

A I am not aware.

MS. HYNES: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Gusowsky, on Friday you testified that you had a masters in business administration, is that correct?

A That is correct.

Q Did you also state that you had your MBA with a specialization in accounting and finance?

A Yes, I did.

Q During the course of your professional life, it's true, is it not, that you have handled financial matters?

A It's true.

Q You testified on direct that you were a partner in a tire company, is that correct?

A That's correct.

Q What was the name of that company?

A It is a Longo distributing company.

Q Were you also treasurer of that company?

A Yes, I was.

Q Did you handle the books of that company?

A Yes, I did.

Q Did you do that for a period of approximately twenty years?

A That is right.

Q Did you also testify on Friday that you sold your interest in that company before moving to Rio Rancho?

A Yes, I did.

Q Could you tell me for how much you sold your interest?

A I sold it for inventory only.

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

Q The value placed on the inventory?

A I beg your pardon?

Q A value was placed on the inventory?

A Yes.

Q What was that value?

A About $20,000.

Q Did you own a house in Staten Island?

A Yes, I did.

Q Did you sell it before moving to Rio Rancho?

A Yes, I did.

Q For what price did you sell your house?

A I sold my house for about $50,000.

Q I take it you had purchased that house before that at some point?

A I purchased it before I sold it, yes.

Q When did you purchase the house?

A About 1951, I think.

Q What did you pay for the house when you bought it?

A The house cost about $42,000.

Q Do you belong to any organizations at Rio Rancho?

A Yes, I do.

Q To what organizations do you belong?

A I belong to the homeowners association. I belong to the democratic party, democratic club, I should say. I belong to the Jewish community group. That is about it.

Q Let me show you Defendants Exhibit DR for identification and ask you whether you can identify it?

A I also belong to the Elks, I am sorry. That is a new organization.

Q Can you tell me whether you can identify the picture?

A Yes, I can identify the picture.

Q What is it?

A The picture is a sign --

MS. HYNES: I object, it is not in evidence.

THE COURT: Do you want to offer it in evidence?

MS. THOMPSON: I will offer it in evidence.

MS. HYNES: We object, your Honor.

THE COURT: Let me see it.

(Pause)

THE COURT: Sustained.

MS. THOMPSON: May I be heard at the side bar, your Honor?

THE COURT: No.

MS. THOMPSON: I have no further questions.

THE COURT: Mr. Fleming.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Gusowsky, you have a masters degree in business administration?

A Yes, I do.

Q You identified yourself as a registered public accountant in the State of New York, does that mean a certified public accountant?

A It does not.

Q Are you familiar with the term in accounting marketable securities?

A In the broad term.

Q Do you understand as a matter of accounting that a marketable security is something which can be liquidated within one year?

A I didn't know the definition.

Q Do you know that land is not considered within the term marketable securities?

A I didn't know that that was the definition.

Q Do you know that land is identified as a long term investment?

A Not necessarily.

Q A matter of generally accepted accounting practice?

A Not necessarily.

Q In any event, your education did include education having to do with concepts of investment varying types of investments, is that correct?

A That is correct.

Q Did you purchase ten acres of land in Rio Rancho on July 20, 1970?

A 1969 would be the more accurate.

Q Do you recall filling out a questionnaire sent to you by the government?

A Yes, I do.

Q It is marked 3545-A and has been turned over to us by the prosecutors. I direct your attention to paragraph 14.

A Yes, that is a mistake.

Q That is a mistake?

A It should be '69 instead of '70.

Q The ten acre purchase, that was your largest purchase by far, wasn't it?

A It was.

Q That was in 1969, July of 1969?

A That's right.

Q That was after you had visited Rio Rancho?

A That was during my visit to Rio Rancho.

Q Was that the first time you had visited Rio Rancho?

A No.

Q How many times -- I withdraw that.

You visited Rio Rancho in July of 1969 and purchased a ranchette?

A That's right.

Q How many times prior to July of 1969 did you visit Rio Rancho?

A One time.

Q So that that was your second visit when you purchased an additional ten acres?

A That's right.

Q You had seen the property?

A I did.

Q You had seen the developed portion of the property?

A I did.

Q You had ridden the tramway?

A I did.

Q You had been able to see the relationship between Rio Rancho both developed and undeveloped and the City of Albuquerque?

A I did.

Q You had seen the City of Albuquerque?

A I did.

Q You had seen other areas of the City of Albuquerque?

A I am not sure I understand what you mean. You asked me if I saw Albuquerque and I said I did. That would take in the whole area.

Q I understand.

Did you see the northwest section of Albuquerque?

A Yes, I did.

Q The southern section of Albuquerque?

A Yes, I did.

Q Did you see Paradise Hills?

A I did.

Q Volcano Cliffs?

A No.

Q So far as the land you were buying and its location and its developed or undeveloped state, when you bought that ten acre ranchette you had been there and you knew exactly what you were buying, isn't that right?

A I would rather not anser that question because we would get into an argument.

Q You would rather not answer the question, is that correct?

A Because I couldn't answer it without going into a complete explanation.

Q I understand. You weren't wearing a blindfold when you were out on those trips, were you?

A I beg your pardon?

Q You weren't blindfold when you were on those trips?

A No, I wasn't blindfolded, but I was misinformed.

Q You were misinformed about what the land looked like?

A No.

Q Were you misinformed about what the developed area looked like?

A No.

Q Were you misinformed about the size of the developed area relative to the size of the undeveloped area?

A That is right.

Q In 1969?

A That is right.

Q Did you consider that the developed area was one half of the undeveloped area?

A No.

Q The developed area was a very small portion of the undeveloped area, was it not?

A It was.

end t

CROSS EXAMINATION

BY MR. FLEMING:

Q And were you misinformed as to the distance from Rio Rancho developed and undeveloped to Albuquerque?

A No.

Q Were you misinformed about the climate?

A See, there again, if I --

Q You can't answer that question?

A Without explanation I couldn't answer it.

Q Is it your complaint that you were not told that Rio Rancho ultimately acquired more land?

A That's my complaint.

Q That's your complaint.

Now, in May, 1971, you moved to a home which you had built at Rio Rancho, isn't that right?

A That's right.

Q And that was after the property had expanded?

A I'll accept that statement.

Q As a matter of fact, after you moved to Rio Rancho in 1971, you continued to be enthusiastic about Rio Rancho, did you not?

A I did, only in the area that I lived.

Q You were very, very happy living where you were living?

A That's right.

Q And is it fair to say that with regard to these other people who were friends of yours about whom or with whom you talked about Rio Rancho, those people who ultimately purchased land down there, you were highly enthusiastic about the development?

A I was highly enthusiasitc about living in Rio Rancho.

Q And you were surely telling your friends the truth when you talked to them about Rio Rancho?

A About living in Rio Rancho.

Q Did they purchase building lots in Ric Rancho?

A They purchased buildint lots in Rio Rancho.

Q Did they not purchase undeveloped land in Rio Rancho?

A Well, those are building lots. They are undeveloped building lots.

Q And did they purchase for -- did each of them purchase for the purpose of relocation to Rio Rancho?

A I don't think so.

Q Has each of them moved down to Rio Rancho?

A No.

Q Did you tell them, "Look, the only time to buy property at Rio Rancho is if you are going to live here, if you are not going to live here don't buy it."

A I didn't tell them that.

Q You raved about it, did you not?

A I raved about living there.

Q And you were telling them the truth, were you not?

A I hope I was.

Q And you were not soliciting them as purchasers, you were simply talking about your experience at Rio Rancho, isn't that correct?

A That's correct.

Q And that was after the property had expanded, to your knowledge?

A Yes.

Q How much did you pay for your home in Rio Rancho?

A About $32,000.

Q Did you obtain a mortgage?

A No, I didn't.

Q Piad in cash?

A Yes, I did.

Q Was the appreciated value of your half acre applied to when you traded in?

A I really don't know how they worked it. All I know I paid an additional $1400 for the trade.

Q At Corrales Heights?

A Yes, that's right.

Q And am I correct that the value of the half acre which you had traded was traded in at its appreciated value?

A I don't know, because the procedure changed a number of times.

Q All right, you don't know. You don't know.

By the way, did someone working for Rio Rancho or AMREP write to Rio Rancho and recommend you for a job down there?

A Yes.

Q That was someone --

MR. FLEMING: May I have this marked?

XXX (Defendants Chester Carity and Daniel Friedman Exhibit ED marked for identification.)

Q Was that Mr. Z. Peters?

A Yes.

Q Was he your salesman?

A No.

Q Who is Mr. Peters?

A He was part of the administrative staff of AMREP, I presume.

Q Did you speak to your salesman about getting your job down in Rio Rancho?

A Yes, I did.

Q And he said that AMREP would try to help you because you were well qualified, isn't that right?

A That's right.

Q When you got down to Rio Rancho, did you talk to an Allen Litman?

A I did.

Q Who is the administrative manager?

A Yes, I did.

Q And they employed you, is that right?

A Well, they employed me after about four and a half months.

Q After about four and a half months.

And you moved down there in May of 1971?

A That's right.

Q And that is your name, Mr. Morris Gusowsky (handing)?

A That's my name.

MR. FLEMING: I offer it, your Honor.

MS. HYNES: I have no objection, your Honor.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit ED received in evidence.)

MR. FLEMING: May I very briefly, your Honor?

THE COURT: Yes.

(Mr. Fleming read from Defendants' Exhibit ED in evidence to the jury.)

Q Have you attempted to sell your house?

A No, I haven't.

Q What value do you presently place upon your house and lot?

A I haven't given any consideration.

Q In your opinion, has it increased in value since you built it?

A I think so.

Q Has it increased in value as much as 30 per cent, in your opinion?

A I couldn't evaluate that.

Q As much as 50 per cent?

A I couldn't evaluate that, either.

Q That is possible,then, in your opinion?

A I don't think so.

Q 30 per cent, in your opinion?

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

A I don't know. I haven't tried, so I really can't answer that question.

Q Am I correct that Ms. Hynes, the prosecutor, visited you in August of 1976?

A That's true.

MR. FLEMING: I will withdraw that.

No, I won't.

Q Did she ask you questions?

A She did.

Q Did she take notes?

A I'm not sure. I don't remember whether she took notes or not. Maybe she took mental notes. I don't know.

Q Did you see her writing at all?

A I don't remember her writing.

Q Prior to that, in September, 1975, you were contacted by someone from the prosecutor's office here in New York by telephone, isn't that right?

A That's right.

Q And even before that, you had received a questionnaire?

A About the -- well, within two weeks, I would say. Sometime in 1975 I recall that I received the questionnaire and about two weeks after that I think I received a telephone call.

Q And during the telephone call, did they talk to you and did you talk to them about this?

A Well, that's the normal procedure.

Q I agree.

They talked to you, they asked you questions about Rio Rancho and did you answer questions about Rio Rancho on the telephone?

A Yes.

Q And the indictment was thereafter filed, and then, am I correct, that you were surprised, that you were surprised to hear that you had been named as a so-called victim in Count 23?

MS. HYNES: Objection, your Honor.

THECOURT: Overruled.

A A victim of Count 23?

Well, I'm not sure I understand what you are saying.

Q Were you surprised to hear that your name was listed in the indictment?

A I was surprised.

Q And were you, in fact, embarrassed?

A I was embarrassed.

However, I didn't disagree with it.

MR. FLEMING: May I have that struck?

THE COURT: Strike the volunteer answer.

You were asked that question, were you, Mr. Gusowsky?

THE WITNESS: It was part of the answer.

THE COURT: No. The question was, were you surprised and embarrassed?

Q You ran a tire business, is that right?

A That's right.

Q Did your prices go up as your costs of doing business went up?

A Not necessarily. Competition is a factor.

Q You mean your prices rose in response to competition?

A TUey also fell in response to competition.

Q Let me ask you a question, Mr. Gusowsky:

You were in the tire business for 20 years, were you not?

A Yes.

Q Were you providing services as cheaply in 1951 as you were in 1971?

A No.

Q Prices went up during that period of time, did they not?

A Yes.

Q And it went up because it was costing you more to do business, isn't that correct?

A That's correct.

Q And competition insofar as it existed kept your prices down?

A Not necessarily.

Q You paid interest on your land purchases?

A Yes, I did.

Q Did you deduct those interest payments from your income tax?

A Yes, I did.

Q You did not have a mortgage, is that correct?

A I did not have a mortgage.

Q Have you attempted to write off your land acquisitions as a loss on your income tax return?

A No, I haven't. No, I haven't.

Q You understand, of course, that you can take a capital loss and apply it against a capital gain?

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

A Yes, I understand that you can take a capital loss and apply it against a capital gain.

Q So if you make money on your securities, you can apply a loss on land, is that right?

A That's right.

Q You understand also if you have a capital gain or not, you can apply $1,000 of a capital loss against your ordinary income as a deduction?

A I understand that.

Q Isn't that right?

A Yes.

Q You have not done so?

A I have not done so.

Q Or attempted to do so?

A I have not attempted to do so.

Q Have your property taxes on your real estate at Rio Rancho gone up since you purchased it?

A Yes, they have.

Q And those property taxes are as received by Sandoval County?

A That's right.

Q And they are based upon Sandoval County's appraisal of the value of the land?

A Yes, they are.

MR. FLEMING: I have nothing further.

MR. ARKIN: I have a few questions, your Honor.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. ARKIN:

Q You were the chairman of the Home Owners Association?

A Chairman of the board, yes.

Q Chairman of the board.

How many members are there in that association?

A About 300, I think.

Q And I take it a number of those members lived in unit 16?

A Yes.

Q How many houses are there in unit 16?

A I don't know.

Q More than 150?

A Could be.

Q Close to 500?

A I'm not sure.

Q You own a lot in unit 16, don't you?

A I do.

Q A half acre lot?

A No, one acre lot.

Q Do you recall what you paid for it?

A About $4600.

Q Do you know what it is worth today?

A No.

Q Have you ever thought to have it appraised?

A No.

Q When you bought your ranchette, you knew, didn't you, that you had no right to exchange that ranchette land, ten acres, into the developed area, isn't that right?

A I didn't know that.

Q Sir, you have a MBA, don't you?

A I do.

Q And you are a public accountant?

A Yes, I am.

Q And you had a lot of contracts in the course of your professional career, haven't you?

A Yes, I have.

Q And in your career as a businessman?

A Yes.

Q When you purchaed your half acre residential lot, the one you eventually changed into Corrales Heights, you knew you had an exchange right, didn't you?

A I did.

Q It was right in the contract, wasn't it?

A It was also spelled out.

(Continued on next page.)

Q I show you Government Exhibit 110-F, which is your contract for the purchase of ten acres in Unit 17, and ask if you can point out to me where you had the right to exchange your ten acre lot or your ten acre ranchette into the developed area.

(Handing)

(Pause)

A There is an exchange privilege here, but there is a time limit.

Q The exchange privilege you are referring to, sir, is in the last page of the rider, which has to do with your right to change your property for any other property within six months; isn't that correct?

A That's right, yes.

Q It does not talk about inot a developed area with utilities, does it?

A It does not.

Q You read that contract, didn't you, before you signed it?

A I didn't read it.

Q You didn't read it?

A No.

Q You just signed it without reading it?

A That's right.

Q And you signed it in two places without reading it, isn't that so?

A That's right.

Q On the first page and the third page?

A That's right.

Q You didn't read anything between your two signatures?

A I did not.

Q You testified on Friday before we broke for the weekend that you believed that you were going to be given utilities in Unit 17, isn't that correct?

A That's right.

Q Which you said the purchase price for the ranchette included utilities?

A I was under that impression.

Q Would you read that agreement again, Government Exhibit 110-F, and show me where in that agreement it says that you were promised utilities?

A There is no promise that I can find.

Q No promise in there, is there?

A No.

Q Would you read the first page of that agreement, 110-F. Pick it up and read it, would you, sir, towards the bottom of that page, just above your signature.

Does it not say that this agreement sets forth the entire agreement between the parties?

A I see that paragraph.

Q This agreement, right above your signature, says that this piece of paper, the piece of paper which you signed, sets forth the entire agreement between the parties, doesn't it?

A It does.

Q And there is nowhere in that agreement that promised you utilities, does it?

A I don't see it there.

Q It's not there, is it?

A No.

Q Sir, you said in 1951 you bought a house in Staten Island for $42,000.

Was that your testimony a few moments ago?

A That's right.

Q You paid $42,000?

A Yes.

Q How much land did you have at that time when you bought it?

A 60 by 100.

Q And that when you came to sell that house twenty years later, you got $50,000 for the same house and the same piece of land?

A That's right.

MR. ARKIN: I have no further questions.

THE COURT: Redirect.

MS. HYNES: First, your Honor, I will offer 110-L.

MR. ARKIN: No objection.

(Government Exhibit 110-L received in evidence)

REDIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Gusowsky, I show you 110-L for identification (handing).

Is that an envelope to the Chemical Bank with your return address on it?

A Yes, it is.

Q 110-L has a date stamp marked "Received May 10, 1971."

(Pause)

Mr. Gusowsky, you said in response to a question by Mr. Fleming that you were misinformed.

What were you misinformed about at the time you bought the land?

A About the size of the entire Rio Rancho development.

Q Can you explain?

A Well, when I bought my property --

MR. FLEMING: What he was told, if your Honor please.

MS. HYNES: He is about to tell you.

Q Will you tell us what you were misinformed about with respect to that?

A When I bought my property, I was told that the area of Rio Rancho consisted of approximately 50,000 acres.

MR. FLEMING: How much?

Q How many acres?

A 50,000 acres.

Q And at that time what was said to you with respect to when you might resell your property?

A At a sales meeting we were told at that time that the land was approximately eighty percent sold and that as soon as the other twenty percent was sold the company would go into a reselling program and we sell the property that I bought.

Q Did they give you any time frame within which that resale office would be set up?

A Yes, they did.

Q What was that time frame?

A They said about in five years.

Q Did you rely upon that in purchasing the land?

A I did.

Q You also said in response to Mr. Fleming's question about whether you were misinformed.

What was that?

A Well, I made allowances. I was misinformed, because they used the figure of something like sixty percent mean temperature, and sometimes the temperature does get mean.

Q What do you mean by that?

A It gets cold.

Q How cold?

A Well, last Sunday it went down to 15 below zero, but that is an unusual situation.

Q You stated to Mr. Fleming that you were enthusiastic about living at Rio Rancho?

A I was, or I am.

Q And after you moved to Rio Rancho, were you enthusiastic about your investment of sixteen acres?

A No, I was not, and that's why I didn't buy any more property.

Q In response to Ms. Thompson's questions on last Friday, Ms. Thompson asked you whether you continued to tell people back in New York, after you moved to Rio Rancho, whether you continued to tell people back in New York about Rio Rancho, and do you recall saying that you did?

A I did.

Q And that you continued to tell them that it was a good place to live?

A That's right.

Q Do you recall that?

A Yes.

Q And you said that you told them many things, and do you recall answering that you told them it was a good place to live, but I also answered letters that came to me asking what the possibility of selling their land was?

Do you recall that?

A Yes, I do.

Q And what were those letters that came to you and what did you answer?

A They came to me from friends who asked me --

MR. FLEMING: I object.

THE COURT: Sustained.

Q Did you receive inquiries about the possibility of reselling land at Rio Rancho?

A I did.

Q Did you make inquiries about the possibility --

MR. FLEMING: Objection, your Honor.

THE COURT: Sustained. Improper redirect.

Q Mr. Gusowsky, do you recall Mr. Fleming asking you about taking a loss against a capital gain?

A I remember that.

Q And in order to take a loss against a capital gain on your income tax, would you have to sell your land in order to take a loss on it?

A I would have to sell my land.

Q And have you been able to sell your land?

MR. FLEMING: Did the witness finish his answer?

THE COURT: What?

MR. FLEMING: I thought he was going to add more.

THE COURT: Are you finished?

THE WITNESS: Well, I was going to say, or prove to the government that I could not sell it and take it as a total loss.

Q What is necessary to prove to the government that you cannot sell it?

MR. FLEMING: I object to that.

THE COURT: Overruled.

Q If you know.

A Well, I presume that --

Q Do you know, Mr. Gusowsky? We don't want you to guess.

A Specifically, it would be -- it would be a matter of proving to the government that it is impossible to sell.

Q Have you tried to take that route on your income tax, taking it as a loss?

A I have not tried to take that route.

Q Nevertheless, have you made inquiries concerning resale?

A I have made inquiries.

Q Have you been able to sell your land?

A I have not.

Q How long have you been trying to resell your land?

A The past two years.

Q Do you recall being asked by both Ms. Thompson and Mr. Fleming about being embarrassed about finding out that your name appeared in the indictment?

A Yes, I do.

Q I believe you also testified that you could not serve on the water rate committee as a result of that?

A Well, I --

Q Can you explain that?

MR. FLEMING: That is repetitive, your Honor.

THE COURT: What?

MR. FLEMING: I think that is repetitive. I object.

THE COURT: Overruled.

Q Can you explain that?

A Yes.

I was appointed to the water rate committee --

Q What is the water rate committee?

A The water rate committee was a committee established to evaluate the company's request for a rate increase.

Q A rate increase for what?

A For water; a water rate increase.

And so a committee of three organizations in Rio Rancho formed a unit, a committee, to evaluate the water rate request or the water rate increase request.

Q And approximately when was that committee formed?

A About October of 1975.

Q And when were you told you could no longer serve on that committee?

A The latter part of October.

Q And was that after the indictment in this case?

A I don't know when the indictment was, so I don't know how to answer that question.

Q But nonetheless, what was the reason for your not being able to serve on the committee?

A The fact that my name, I understand, appeared in the indictment.

Q Do you recall being asked by Ms. Thompson on Friday that -- she asked you whether one of the reasons why you purchased your land was the fact that you saw -- withdrawn. I will get the exact reference.

(Pause)

Q Do you recall being asked whether you considere in your purchase of land at Rio Rancho the fact that you had seen what happened to land values in Staten Island after the Verrazano Bridge began construction, is that correct?

A I remember that.

Q Do you recall that testimony?

A I remember that.

Q You visited Rio Rancho for the first time in 1969, is that correct?

A That's correct.

Q From 1969 to the present time, have any bridges been built over to the west side toward Rio Rancho?

A No, there haven't.

t2b

Q Do you recall being asked by Ms. Thompson on Friday that you were able to exchange your piece of commercial property in Unit 13 toward your ranchette in Unit 17, is that correct?

A I remember that.

Q That was in exchange for an undeveloped piece of property for another undeveloped piece of property, is that correct?

A That's correct.

Q You testified in response to Mr. Arkin's question that you did not know that the ranchette that you purchased did not carry with it an exchange privilege into the building area?

A That is right.

Q Do you recall Mr. Arkin asked you questions whether your purchase in Unit 17, your ten acre purchase for $21,000, whether that included utilities?

What, if anything, was said or shown to you which led you to believe that you would receive utilities at your ten acre ranchette?

A I cannot remember anything specifically said. However, I feel that had I know --

MR. FLEMING: I object.

THE COURT: Wait.

Q Mr. Gusowsky --

THE COURT: He says he cannot remember anything specifically said.

Q Were you shown a film of Rio Rancho at the time that you attended the sales dinners?

A Yes.

Q What, if anything, was said with respect to the development of the property at Rio Rancho Estates?

MR. FLEMING: If we are referring to the film, your Honor, I object.

THE COURT: The film speaks for itself.

Q Let me direct your attention to the time when you visited the property at Rio Rancho Estates and you bought that ten acre ranchette at the time that you visited the property, is that correct?

A That is right.

Q You were shown the developed area of the property?

A That is correct.

Q You were shown that development was beginning in a building area in Unit 11, is that correct?

A Will you please repeat that?

Q Mr. Gusowsky, at the time that you went to your property -- went to visit Rio Rancho in July of 1969, that was the time when you purchased the ten acre ranchette?

A That is right.

Q What, if anything, was said to you at the time you purchased that ranchette with respect to the growth and the extension of utilities at Rio Rancho?

A I was led to believe --

THE COURT: Wait.

Q What were you told?

A I don't remember what I was told.

THE COURT: All right. That is enough of that. You tried hard enough and you cannot come up with anything.

Next subject.

MS. HYNES: Your Honor, I object to that characterization. This witness was shown --

THE COURT: Ms. Hynes, next question.

MS. HYNES: I have no further questions, your Honor.

THE COURT: You may step down.

(Witness excused)

MR. KAUFMAN: The government calls Ken Neiswander.

Your Honor, may we have a minute or two. I understand the witness is not in the witness room.

THE COURT: Do you have another one here?

MR. KAUFMAN: Yes, but he is Mr. Devorkin's witness.

I will just run out and see if he has gone to the men's room.

THE COURT: All right.

(Pause)

KENNETH C. NEISWANDER,

called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. KAUFMAN: Thank you.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Neiswander, keep your voice up so we can all hear you back here.

Where do you live?

A I live at 5709 Maddera Place Northeast, Albuquerque.

Q How long have you lived in Albuquerque?

A Over eighteen years.

Q What is your educational background?

A I have a bachelor of arts degree from the University of Oklahoma.

Q Are you currently employed?

A Yes.

Q By whom are you employed?

A By HUD, FHA in Albuquerque.

Q HUD is the Housing and Urban Development?

A Yes.

Q And FHA is what?

A Federal Housing Administration.

Q Is the FHA part of HUD?

A Yes.

Q How long have you been with the FHA?

MR. FLEMING: May we have a side bar?

THE COURT: Yes.

(At the side bar)

THE COURT: Yes, Mr. Kaufman.

MR. KAUFMAN: I am not sure what Mr. Fleming has asked for. What this witness is going to testify to?

THE COURT: Yes.

MR. KAUFMAN: In general terms he will testify that he has been with the FHA for twenty years. In connection with the FHA's work in the Albuquerque area.

He has been involved in reviewing and in insuring FHA mortgage approval single family homes, multiple dwelling complexes and subdivisions in the Albuquerque area.

That he has reviewed all these different types of housing in the Albuquerque area and he will be testifying that most of Albuquerque's growth as a result of his professional experience in the Albuquerque area has been in certain directions, mostly to the northeast.

MR. FLEMING: I don't see how a person who works for the FHA and reviews mortgages is competent to testify as to which way the city is growing.

THE COURT: He can testify as to the applications he has received.

MR. FLEMING: I think that is so limited as to maybe be irrelevant.

THE COURT: I will let it in. That is some indication, but it's got to be better than that.

(In open court)

BY MR. KAUFMAN:

Q Mr. Neiswander, how long have you been with the FHA?

A Over eighteen years.

Q Has that always been in Albuquerque?

A Yes.

Q What is your current position with the FHA?

A Chief underwriter.

Q How long have you been chief underwriter?

A Since July 1971.

Q What are your duties and responsibilities as the chief underwriter?

A As chief underwriter I am responsible for all of the production insuring office activities in the State of New Mexico underwriting of loans.

Q When you say insuring and underwriting loans, what in general are you referring to?

A The FHA for mortgage insurance premium insures mortgages on single family homes and multi-family complexes for the lenders in order to reduce down payments and increase the term of the loan.

Q In other words, the lender or the mortgagee can make application to the FHA for mortgage insurance?

A Yes.

Q What other positions have you held with the FHA before you were chief underwriter?

A The position of appraiser, subdivision appraiser, data appraiser, deputy chief underwriter, chief underwriter.

Q Do all those different positions have something to do with the overall responsibility of the FHA in terms of mortgage insurance?

A Yes.

Q With respect to single family houses, how does the FHA go about decising whether or not to grant approval with respect to mortgage insurance?

MR. FLEMING: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Neiswander, in connection with granting mortgage insurance on single family houses, are on-site inspections required?

A Yes.

Q In other words, an inspector goes out and actually looks at the house and property?

A Yes.

Q With respect to multi-dwelling buildings, are on-site inspections required as well?

A Yes.

Q Are there additional criteria required for multi-dwelling units that are not required for single family homes in deciding whether or not to grant mortgage insurance?

MR. FLEMING: Objection, your Honor, as outside the offer of proof.

THE COURT: Sustained.

You put the witness on to give us an indication of growth. The issue of mortgages is improper. What he goes to see is immaterial. You have a simple question to ask him.

Q Mr. Neiswander, have multi-dwelling unit complexes applied for FHA insurance in the past ten years?

A Yes.

Q Approximately how many during that period of time?

A Applied?

Q Yes.

A Approximately 100 have applied.

Q Approximately how many of those received FHA approval?

THE COURT: What was the period of time?

MR. KAUFMAN: The last ten years, your Honor.

THE COURT: In the last ten years have applied?

THE WITNESS: Approximately 100 that I can recall, sir.

THE COURT: Go ahead.

Q Approximately how many received FHA approval?

A To the best of my knowledge about 75.

Q Were have most of those multi-dwelling developments been located in the metropolitan Albuquerque area?

MR. FLEMING: I object to the form of the question.

THE COURT: Overruled.

A Most have been located in the Northeast Heights of Albuquerque.

THE COURT: Can you get a little more specific than that.

Q Can you be more specific than the Northeast Heights?

A The Northeast Heights in Albuquerque is generally defined as being an area east of the Sante Fe Trail road tracks and north of Central Avenue.

Q Is there a particular area in the Northeast Heights where most of these apartment, multi-dwelling units have gone up?

A The concentration has developed along Montgomery Boulevard and Ubank Boulevard.

Q Does the FHA get involved with subdivisions in the Albuquerque area?

A Yes.

Q How does the FHA become involved with subdivisions?

A Through application of a response or who wishes to develop a tract of land for future FHA development and insurance.

Q Does the FHA go in and provide some market analysis for subdivision analysis for the subdivision?

A Yes, a market analysis is made.

end t

MR. FLEMING: I object, if your Honor please.

THE COURT: Overruled.

A A market analysis is made in order to determine the degree of risk that FHA would encounter in insuring a number of homes in a certain area.

Q Does the FHA insure the whole subdivision?

A No.

Q How does the FHA deal with the subdivision in terms of insurance?

A In cooperation with the sponsor, the FHA works out subdivision planning, all street, utility layout, attempts to upgrade the planning, which is an objective of FHA in order to make as many of the lots in the area as possible acceptable for housing.

Q Once the FHA determines that this subdivision is acceptable, is it then the fact that the FHA can insure individual houses within that subdivision?

A Yes, they insure the package, the house and the lot.

Q Has your office compiled a list of the number of subdivisions receiving FHA approval during the past ten years?

A Yes.

Q Was that list compiled at the request of the

U.S. Attorney's office?

A Yes.

Q How many subdivisions in the Albuquerque area have received FHA approval since 1967?

A I have a list of 150.

Q 150 subdivisions, is that right?

A Yes.

THE COURT: I thought you said 100.

A 150, sir.

Q Was Rio Rancho Estates one of those?

A No, sir.

Q Did Rio Rancho Estates ever apply for FHA mortgage approval?

A Yes.

Q Do you recall what year?

A The first application that I have record of was July 10, 1967.

Q I show you what has been marked as Government Exhibit 663 for identification and ask if you can identify that.

A Yes, sir.

Q WHo is Roy S. Walker?

A He was the state director of FHA at that time.

Q Is this letter from the files of the FHA?

A Yes.

Q Was it the normal course of the business of FHA to keep this letter in its files?

A Yes.

Q Was this letter made and kept in the ordinary course of business of the FHA?

A Yes.

Q Is this letter written at or about the time of the circumstances reflected in the letter?

A Yes.

MR. KAUFMAN: The government offers 663 for identification.

MR. FLEMING: I object, if your Honor please.

THE COURT: Let me see it.

(Pause.)

MR. FLEMING: If I recall correctly, it has nothing to do with the offer of proof made at the side bar and aside from that it is hearsay.

THE COURT: I won't limit it to that if the letter is properly admissible.

I will let it in.

XXX (Government Exhibit 663 received in evidence.)

MR. KAUFMAN: If I may read it, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government Exhibit 663 in evidence to the jury.)

Q Mr. Neiswander, have you or the FHA broken down these 150 subdivisions as to their geographical locations in the Albuquerque area?

A Yes, I have a breakdown.

Q What were the general locations that were used in breaking down these 150 subdivisions?

A Generally the northeast --

MR. FLEMING: If your Honor please, I thought this man was insurance.

THE COURT: I am a little twisted here, too. He said before in the last ten years about 100 multi-home developments. Now he is saying 150.

I don't know what this is.

MR. KAUFMAN: Your Honor, we have been talking about subdivisions now.

Q Mr. Neiswander, can you tell us what you mean by subdivisions?

A Yes. The multi-family complexes are apartment buildings for multi-family use --

THE COURT: Let me get this straight. You say -- when you started off your testimony you said in the last ten years about 100 multi-family developers and now you say that means apartment houses?

THE WITNESS: That was the question I think I was asked, sir.

THE COURT: Apartment houses?

THE WITNESS: Yes.

THE COURT: This is the first time I heard apartment houses in the last 30 seconds.

Q Mr. Neiswander, when you refer to multi-dwelling units, are you referring to things like apartment houses, garden apartments?

A Yes.

Q Attached townhouses?

A Yes, I think that's the question I was asked.

Q With respect to multi-dwelling units, your testimony was that there were approximately 100 applying to the FHA over thelast ten years of which approximately 75 received FHA approval, most of those being located in the northeast on Montgomery, is that correct?

A Correct.

Q With respect to subdivisions, can you tell us what you mean when you talk about subdivisions?

A Subdivisions are laid out for the productionof single-family homes either attached, detached or semi-detached types but for single-family homes.

THE COURT: All right.

Q The list that you have compiled at the request of the U.S. Attorney's office is a list of subdivisions in the Albuquerque area, is that correct?

A Yes, sir.

Q I believe you testified --

THE COURT: Don't keep going all over it again. We are up to date now.

Q Can you tell us what geographical areas you used to locate these 150 subdivisions?

A We used northeast, southeast, northwest, southwest, northwest mesa, southwest mesa.

Q Now, with respect to the northeast, can you tell us how you define the boundaries of the northeast?

A The northeast are generally defined as the area east of the Santa Fe tracks and north of Central Avenue.

Q And the southeast?

A East of the Santa Fe tracks and south of Central Avenue.

Q With respect to the northwest and southwest, how do you define that for purposes of this compilation?

A Northwest is generally described as the area in the Rio Grande Valley extending north from Central Avenue in the Rio Grande Valley.

Q The southwest?

A The same for the south.

Q When you talk about the Rio Grande Valley, are you referring to both the east and the west sides of the river?

A Yes.

Q With respect to the west side of the river, how much of that comprises what is called the valley?

A It's very difficult to say in area. The valley is much narrower, the flood plain of the valley is much narrower on the west side of the Rio Grande River than on the east in most places. Most of the development, I think, is in the east of the Rio Grande Valley, but the valley is distinguishable from the heights in both cases.

Q Then when you refer to the mesa, what is the mesa?

A West mesa is the higher land that's west of the Rio Grande River. It is quite a bit higher than the Rio Grande Valley, several hundred feet.

Q Of these 150 subdivisions since 1967, did you tell us how many were located in terms of just number of subdivisions on the west mesa?

A 26.

Q How many were located in the northeast section of Albuquerque?

A 115.

Q Have you determined what the total number of lots are in each of these 150 subdivisions?

A Yes, sir.

Q What is the total number of lots in the 150 subdivisions?

A 12,571.

Q Of those lots, can you tell us how many of those lots are located on the west mesa?

A 2475.

Q How many are located in the northeast section?

A In the northeast 9589.

Q That would be approximately 75 per cent in the northeast section?

A We do have some, about 500 lots that were located in the northwest valley and the southwest valley and the southeast heights.

THE COURT: Wait a minute. I assume you are doing this to create a relationship against Rio Rancho. Since you keep referring to the west mesa, could you let us know where the west mesa is in relation to Rio Rancho.

Q Can you answer that question, Mr. Neiswander?

A The west mesa extends for many miles both north and south. Rio Rancho, as I recall, is located the north of what we would consider the west mesa in another county other than Bernalillo County in which Albuquerque is located.

We have developments on the west mesa that predate Rio Rancho.

THE COURT: That isn't what I am asking.

THE WITNESS: I know --

THE COURT: I want to know, you keep referring to west mesa.

THE WITNESS: Yes, sir.

THE COURT: Does that include Rio Rancho or doesn't it?

THE WITNESS: It would to me, yes, sir.

THE COURT: It would. All right.

Go ahead, Mr. Kaufman. He says the west mesa would include Rio Rancho.

Q Rio Rancho is in what county, Mr. Neiswander?

A Sandoval County, I believe.

Q The 150 subdivisions that the FHA has compiled are all in what county?

A Bernalillo County.

Q The west mesa that we have been talking about here in terms of a total of 26 out of 150 subdivisions, are all those in Bernalillo County?

A Would you repeat that, please?

Q Of the 26 out of the 150 subdivisions that have appeared on the west mesa, are those all in Bernalillo County?

A To the best of my knowledge, yes.

(Continued on next page.)

Q Mr. Neiswander, based on your professional experience with the FHA and your personal experience of having lived in Albuquerque for approximately 20 years, what has been the direction of Albuquerque growth during this period of time?

MR. FLEMING: I object.

THE COURT: Overruled.

A Northeast.

MR. KAUFMAN: No further questions, your Honor.

XXX CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Neiswander, the FHA is not really in the business of giving mortgages, is it?

A I'm sorry, I didn't get that.

Q The FHA, it is not in the business of giving mortgages, is it?

A No, it is not.

Q It gives mortgage insurance?

A Yes.

Q And I take it that you have an idea of what percentage of the overall mortgages in the Albuquerque region have been insured by the FHA, don't you?

A Roughly.

Q And that is about what, 12 or 15 per cent of all of the mortgages?

A I would say closer to 20 per cent, 25 per cent.

Q Is that -- well, let's take it last year, the year 1975.

A I don't know. I don't recall.

Q Do you know the year before?

A It's a general figure in my mind. I have no specific knowledge.

Q The general figure in your mind is 20 to 25 per cent?

A Yes, sir.

Q You don't know whether it is closer to 20 or 25?

A No, sir.

Q So when you testified, you are testifying based upon facts and figures having to do with some 20 per cent or so of the mortgage market in the Albuquerque region, isn't that so?

A Yes.

Q I mean, do you know, for example, how many mortgages are granted by Albuquerque Federal?

A Albuquerque Federal Savings & Loan?

Q Yes, sir.

A No, sir.

Q You testified just a few moments ago that when a subdivision applies for FHA approval and the FHA approves it, the FHA chose not to insure the entire subdivision, but only house and lot packages within that subdivision, isn't that true?

A That's true.

Q So that you don't give mortgage insurance upon all of the land and all of the houses in particular subdivisions?

A We do not.

Q And the land and the house which you do insure has to do with in addition to where it is at with the particular individual who applies for insurance, am I correct in that?

A Eventually, yes.

Q His credit?

A Yes.

Q You know, do you not, that there are several FHA approved mortgages at Rio Rancho?

A Yes.

Q Do you know how many there are?

A No, I don't.

Q Do you know that there are about 40?

If you don't know, you needn't answer, just say you don't know.

A Excuse me, I'm trying to remember, but it's very difficult to keep all these figures in mind.

Q Take your time.

A I would make a judgment of from 25 to 30.

Q By the way, you said before that Rio Rancho was not on your list of subdivisions?

A Yes, sir.

Q But you still do insure mortgages in Rio Rancho, don't you?

A Yes, sir.

Q And you insure individual house and lot packages at Rio Rancho, don't you?

A Existing ones, yes, sir.

Q Just like you do in other subdivisions?

A Yes, sir.

Q By the way, do you know that FHA mortgage insurance is based at least in part upon an on-site inspection of the lot and house? Isn't that so?

A Yes.

Q And so presumably someone from FHA went out to Rio Rancho and gave an approval?

A Yes.

Q Do you know who that was?

A Several different appraisers. I don't recall which ones.

Q You don't recall names?

A No, sir.

Q Do you recall what the approximate amount of the appraisals on the lost at Rio Rancho were?

A I recall that they ranged from about 10,000 800 up to I would judge 35,000.

Q Which was --

A House and lot.

Q House and lot combined?

A Correct.

Q Does your appraisal break down the house and the lot into separate units?

A Yes.

Q Do you recall what the apprvisal per lot was?

A When?

Q Let's take last year, or this year. This year is almost done.

A Okay, this year would be better.

About $60 a front foot.

Q Well, being as I am not a fast multiplier, how odes that apply to, say, half an acre?

A Well, half an acre is 11,000 some square feet.

Let's see.

I'm not, either.

Q Well, you said how much per square foot now?

A I didn't say square foot, I said front foot, sir.

Q Front foot.

So if you had 80 front feet and you multiplied that by $60, you would have about $4800?

A Correct.

Q And if you had 100 front feet, it would be $6,000?

A Correct.

Q And if a half acre lot were -- maybe I better not do the multiplication, I will leave that for some future time, but if I were to say to you that the lots in say, the Corrales section of Rio Rancho had been appraised for $5400 per lot, that would seem within the ball park to you, wouldn't it?

A It would be within the ball park.

Q These approvals for FHA mortgage insurance at Rio Rancho have all been subsequent to 1967, haven't they?

A I don't recall all of this exactly.

I think we might have had one case in 1966 on an existing basis.

Q But then almost all the others were post 1967?

A Yes.

Q By the way, has the FHA approved mortgage insurance upon the National Secretary's Association at Rio Rancho?

A Yes.

Q They have done that?

A Yes.

Q When was that done?

A About 1969 or 1970.

Q By the way, with respect to the 26 subdivisions which you spoke about on the west mesa, it is true, isn't it, that all but two of those subdivisions on the west mesa were created post or after 1970?

A I'd have to run this list and find out, sir.

Q Take your time.

(Pause.)

A I show about three that were pre-1970.

Q So at least on your observations based on the notes you have there, 23 of them were 1970 or afterwards, isn't that right?

A Yes, sir.

Q So if you took the overall number of subdivisions which have received FHA approval, you have to say that since 1970 that there has been a rather dramatic or substantial percentage increase in terms of the west mesa, isn't that so?

I am asking you about percentages now.

MR. KAUFMAN: Objection to dramatic.

THE COURT: You don't like the word dramatic?

All right, strike the word "dramatic."

MR. ARKIN: I will withdraw it.

A The question was an increase?

Q Yes, percentagewise.

A Yes.

Q Percentagewise, there has been a substantial increase in west mesa subdivisions?

THECOURT: Over --

A Over what?

Q From 1970 to the present time.

A Yes, yes.

Q What is it that you have in your hand, sir?

A This (indicating)?

Q Yes.

A It is a list of subdivisions.

Q By the way, the National Secretary's Association is an apartment house, isn't it?

A Yes, sir.

Q Are you aware of the fact in respect of -- I am asking you about market conditions now -- that Rio Rancho, aside from Albuquerque housing market, also has a national market from which it draws its customers?

MR. KAUFMAN: Objection, your Honor. It assumes a fact in the first part of Mr. Arkin's statement, "aside from a local market."

I don't think that is in evidence at all.

THE COURT: All right. I will sustain the objection.

MR. ARKIN: I will rephrase the question.

Q Do you know of your own knowledge that certain people who have resided in Albuquerque have purchased houses at Rio Rancho?

A Yes.

Q Do you also know that Rio Rancho Estates' market, that is, the people who buy Rio Rancho homes, is nationwide?

A I can't say that.

Q By the way, does your office, the FHA office, have a OILSR representative?

A What?

Q An Office of Interstate Land Registration representative.

A No, sir.

Q Is there, to your knowledge, an OILSR representative in the Albuquerque area?

A Yes.

Q He is associated with whom?

A He works directly out of the department in Washington.

Q But he is also located in Albuquerque?

A Yes, sir.

Q Do you know what his name is?

A John Minnett.

Q How do you spell that?

A I think it's M-i-n-n-e-t-t.

Q Do you know that he has made inspections of Rio Rancho?

A No, sir.

Q You do not know anything about his activities in respect to Rio Rancho?

A No, sir.

Q Do you know what he does generally?

A I know what he does generally.

Q What does he do generally?

A Generally, at the request of his office in Washington, he inspects outlying properties for the Interstate

Land Sales. That's all I know.

Q Do you know what a HUD property report is?

A No, sir.

I've heard of it, but I don't know what it is.

Q You don't know what it is.

MR. ARKIN: Please mark this, Mr. Frezzo.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit EE aarked for identification.)

Q Mr. Neiswander, are you able to recognize EE for identification (handing)?

A Yes, I've seen this.

Q Have you read that report?

A Sometime ago, yes, sir.

Q What is it? What is EE?

A This is a report of the housing market in Albuquerque as of November 10, 1970.

MR. ARKIN: We offer it.

MR. KAUFMAN: Your Honor, at this point I object. I don't think Mr. Arkin has qualified it.

THE COURT: Let me see it.

(Handing to court.)

THE COURT: This comes out of your department?

THE WITNESS: Sir, I believe they came out of the -- our office in Washington.

THE COURT: I will let it in.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit EE received in evidence.)

MR. ARKIN: Your Honor, may I read two sentences from it?

THE COURT: Yes.

(Mr. Arkin read from Defendants' Exhibit EE in evidence to the jury.)

MR. KAUFMAN: I think Mr. Arkin, in context, should read from the beginning of the paragraph.

THE COURT: He can read what he wants and you can read what you want.

MR. KAUFMAN: I think under Rule 106, I think we have a right to ask him to read all in context at one time.

THE COURT: He will read what he wants and you can read what you want.

(Mr. Arkin continued to read from Defendants' Exhibit EE in evidence to the jury.)

Q Just a few more questions, Mr. Neiswander.

Are you aware that the FHA appraisals in Rio Rancho come out at the or approximate the company's selling price for lots on its property?

A No, sir.

Q Do you know that people who live at Rio Rancho -- strike that.

Do you know that people who intend or make a decision to build a home at Rio Rancho have been able to utilize their lot in the undeveloped portion of Rio Rancho as a full or almost full down payment towards a house and lot package in the developed portion of Rio Rancho?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

MR. ARKIN: I have no further questions.

THE COURT: Mr. Fleming.

(Pause.)

THE COURT: We will have a recess now.

(Recess.)

(Continued on next page.)

(In open court - jury not present)

THE COURT: Yes?

MS. HYNES: Your Honor, we are trying to be sure that everyone is clear on what is necessary in connection with Mr. Woodward's testimony.

Mr. Arkin agrees that the government need not bring up a file clerk and say, " These are documents that are in the government's possession." That's not necessary.

Mr. Arkin further agrees that he will accept the government's representation as to information contained in those documents which were outlined to your Honor last Firday, and that information pertains to the type of camera that was used, the lens that was used, the altitude at which the pictures were flown, the weather conditions on that day.

The weather conditions, whether we can document for each photograph the weather conditions, is open to question, but I believe that Mr. Woodward, by looking at it, would be able to testify as to weather conditions.

So the issue really comes down, your Honor, to this:

Whether that information -- and we understood as of last Firday that if we provided that information to the defense counsel that that would be sufficient information for them and that, therefore, we didn't have to start dragging up the documents themselves.

Now, that is the question before the Court.

Given all of that basic information, must we now provide the documents, or if your Honor is going to rule that that information is a sufficient foundation for the admissibility of these photographs, which was what we understood your Honor to be indicating on last Friday.

We have told them that we have this information and we will give them that information.

THE COURT: Yes, Ms. Cross?

MS. CROSS: I sat down with Mr. Devorkin this morning and got down the type of information that he was talking about.

It turns out that none of these photographs were taken by employees of the United States government, they are apparently, I assume, on contract to the United States government, but they are independent parties.

THE COURT: I don't think it makes any difference.

MS. CROSS: But they record certain information which they then turn over to the government, and it is hearsay, then, in the government's files from these individuals who have flown it, and that is our objection.

THE COURT: Would it be hearsay if I was an employee of the government? What difference does it make?

MS. CROSS: There is an exception as to an employee of the government.

THE COURT: Not if he was under contract to the government and was part of the government service.

Objection overruled.

What is your next point?

MS. CROSS: That is our main point. We don't know what the nature of the contracts are with these people who ended up taking these pictures, what the nature of their agreement was.

I assume that they are the ones that have to give the information to the government.

THE COURT: Objection overruled.

Is that all?

MS. CROSS: That is the basic objection.

We don't have weather on a number of them. On the Albuquerque ones, all we have is that it is ideal weather, whatever that may mean.

We do not have time for most of them at which they were taken, except for a couple of the Florida ones.

MR. DEVORKIN: Ms. Cross is correct, except Mr. Woodward is a licensed commercial pilot and I think he is qualitied to testify what the weather is from looking at those ground pictures.

THE COURT: You mean as to time? If you take something at 8:00 o'clock in the morning and 5:00 o'clock at night, you can have an entirely different impact, can't you?

MR. DEVORKIN: I'm not sure whether you do or you don't, your Honor. Mr. Woodward would know.

THE COURT: Why don't you ask him.

MR. DEVORKIN: Whether there are any shadows on the ground or what not.

MS. CROSS: We would, of course, want to voir dire Mr. Woodward on the making of those mosaics.

MR. DEVORKIN: Then as I understand it, I can make a representation on the record that this information is contained in the government's files, the information I gave Ms. Cross this morning.

THE COURT: I don't think you have to do that unless they are going to make an issue of it.

Are you going to make an issue of it?

That was my point in turning everything over to you so you could look at it.

If you were going to make an issue of it, then the government would make a record of what they were turning over.

If you weren't going to make an issue of it, then we didn't have to do it.

MR. FLEMING: My feeling is I would like the information in the record, if your Honor please, so I know what it is and I know whether it does bear on --

THE COURT: I thought that was furnished to you, or at least your representative, Ms. Cross.

MR. DEVORKIN: Yes.

MS. CROSS: Yes.

I would like, however, this information in the record, because I will ask questions about it.

MR. FLEMING: It goes to weight, your Honor.

MS. CROSS: Yes, it goes to the weight of it.

THE COURT: I thought after looking at it, if you were satisfied with it, you weren't going to use it.

If you are going to use it, we will make a record of it.

MR. FLEMING: I am sorry, your Honor, I have misunderstood this whole colloquy. I thought the whole question was whether we were required to call a witness --

THE COURT: No. I went beyond that last Friday. I said turn over what you got and see if they want to make an issue of it.

MR. FLEMING: An issue to me meant do we dispute the fact being represented.

THE COURT: No, no. If you wanted to cross examine on the camera and developers and camera, you are going to dispute as to weather, fine. I don't care which way you do it, I just want the record clear that if you want or if you are going to have a question on this going to weight as a result of information that has been furnished you by the government, then the government will make a record in front of the jury what they are turning over.

MR. FLEMING: Yes, I would agree.

MR. DEVORKIN: I would just represent that if an employee of a particular agency were called to testify, that employee would state and then I will do it that way.

THE COURT: Whatever you are going to put.

MS. CROSS: A statement that that is in the record and there are records of it.

I gather you haven't talked to those agents yet.

THE COURT: All right. Bring the jury in.

(Jury present)

CROSS EXAMINATION CONTINUED

XX

BY MR. FLEMING:

Q Mr. Neiswander, did you testify that in the last ten years, 12,571 FHA mortgages or guarantees have been given on -- what are they, single dwelling lots?

Is that how you characterized them?

A No, sir, I didn't testify to that.

THE COURT: Single family homes.

Q Single family homes.

A I testified that there were 12,571 lots in subdivisions that received FHA -- not approval, but production.

Q All right.

And those lots are zoned for single family dwellings?

A Yes, sir.

Q That's my point.

And as opposed to 12,571 lots approved for single dwelling use, you have also received applications for 100 multi-dwelling units?

A Approximately.

Q And have approved 75 of those multi-dwelling units?

A Approximately.

Q Did you testify that of those 75 multi-dwelling units, some were garden apartments?

A Yes, sir.

Q Do you know how many were garden apartments?

A ' The majority were garden apartments.

You want to define a garden apartment as being a two story walkup type?

Q Yes, I was going to do that.

Is that what it is?

A That's the way I define it.

Q They are connected, that's the point?

A Yes.

Q In other words, you can build a series of connected apartments on a piece of land?

A Yes, sir.

Q Were any of the multi-dwelling approvals -- did any of the multi-dwelling approvals have to do with high-rise apartments in excess of five stories?

A No, sir.

Q Did any have to do with high-rise apartments?

A Not within this time period.

Q Is it fair to say, then, that over the past ten years, building in Albuquerque generally has been predominantly single dwelling homes?

A Yes.

Q And that has been characteristic of the city from its origin, isn't that correct?

A Yes.

Q It is essentially a single dwelling city?

A Essentially.

Q Well, more than essentially. It is predominantly a single dwelling, is it not?

A I am just repeating what you said; essentially.

Q With regard to those 12, 571 lots zoned for single dwelling which the FHA approved, did you testify that about 75 percent were in the northeast sector of Albuquerque?

A Yes, sir.

Q And about 25 percent were on the west mesa, is that correct?

A 2500 out of the 12,000.

Q That's right. 2,475 out of 12,000 on the west mesa?

A Yes, sir.

Q 9589 on the northeast?

A Yes.

Q And you said, I believe, there were 500 lots scattered in other areas of Albuquerque?

A Yes.

Q So that of those 12,571 lots approved by FHA, they have been divided principally by 65 percent in the northeast, about 20, 22 percent on the west mesa, is that correct?

A That would apprear to be right, sir.

Q And those two areas have consumed virtually all of the lots you are talking about?

A Yes.

Q Okay.

Two areas, is that right?

A Yes.

Q Do you know of a Dale Bellamah Company?

A Yes.

Q I think it is spelled B-e-l-l-a-m-o-n. Is that correct, Mr. Neiswander?

A B-e-l-l-a-m-a-h, I think.

Q M-a-h?

A Yes, sir.

Q How do they pronounce it?

A Bellamah.

Q Is he one of the principal constructions or it one of the principal construction companies in New Mexico?

A Yes.

Q Highly successful?

A Yes.

Q Of high reputation?

A Yes.

Q Am I correct that Dale Bell Bellamah Company, with other partners, has very recently made a substantial investment in acreage on the west mesa?

A Yes.

Q And is a bank one of the partners in that venture?

A I don't know, sir.

Q Are the other partners in that venture with Dale Bellamah Company substantial, to your knowledge, substantial financially, to your knowledge?

A I don't know the other partners.

Q All right.

Is Bellamah's judgment, Dale Bellamah's

company's judgment with regard to opportunity in the Albuquerque area considered to be good judgment?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Am I correct that that investment has been in acreage which is called Taylor Ranch?

A Yes.

Q And Taylor Ranch is about four miles from the Rio Rancho property?

The Taylor Rancho is between Rio Rancho and Albuquerque, isn't that right?

A Yes.

Q On the west mesa?

A Yes.

Q And how far is Taylor Ranch from Albuquerque?

A The city limits.

Q The city limits?

A Three, four miles.

Q Am I correct that it is three or four miles on the other side?

A You will have to excuse me. I may be wrong from the city limits. It may be included in the city limits now. I don't know that for sure.

Q All right. Let me put it another way.

How far is the Taylor Ranch on the west mesa from the center of downtown Albuquerque?

A I would judge it's about five miles.

Q And am I correct that it is about three to four miles from Rio Rancho, Rio Rancho being on the other side of Taylor Ranch?

A My judgment would be that it would be farther than that.

Q Farther than that? How far?

A I would have to judge closer to eight to ten miles.

Q It is your testimony that the Taylor Ranch is eight to ten miles from Rio Rancho?

A Excuse me. We haven't defined what Taylor Ranch is.

If we are talking about the undeveloped parts of Taylor Ranch, I don't know where that stops and I certainly can't say how far it is.

Q Taylor Ranch is approximately 1,000 acres, isn't that right?

A I don't know.

Q I am talking about developed and undeveloped.

A I don't know how large it is.

Q In any event, Taylor Ranch is on the west mesa,

COPY RECEIVED
ROBERT B. FISKE JR.
MAY 5 1977
U. S. ATTORNEY
SO. DIST. OF N. Y.

by